ROMA MITCHELL COMMUNITY LEGAL CENTRE INC.

(formerly Norwood Community Legal Service Inc.)
ABN 93 426 790 517

PO Box 4018
NORWOOD SOUTH 5067

110 The Parade
NORWOOD 5067
SOUTH AUSTRALIA
Telephone: (08) 8362 1199
Facsimile: (08) 8362 0410
Email: rmclc@ozemail.com.au

The Roma Mitchell Human Rights Volunteer Service presents a Draft Proposal aimed at stimulating the necessary discussions and negotiations at both community and government levels in an attempt to definitively resolve the historical conflict between Aboriginal and non-Indigenous South Australians. This Draft Proposal builds upon the experiences of Indigenous peoples in Canada in negotiating a treaty ensuring them self-determination and self-government, albeit recognising that their initial juridical position by which they were able to negotiate with the Canadian government is by no means analogous to that of Aboriginal Australians.

The cornerstone of the Draft Proposal is to create a federal state (United South Australia) with two provinces who are politically equal before the law and can be neither undone by the will of Parliament, nor subjected to a hierarchy other than the one inherent in a system of federal government. This political change envisages equality and co-operation between the future Aboriginal and non-Indigenous provinces of South Australia. This Draft Proposal outlines the steps necessary to empower Aboriginal and non-Indigenous South Australians to finally resolve the question of coexistence. The Draft Proposal depends hugely upon the good-will, co-operation and negotiations between Aboriginal and non-Indigenous Australians of all levels and professions, to re-visit and resolve the issue of the nature of the political relationship between them.

The proposed Draft Constitution for a new United South Australia with two constituent provinces borrows heavily from both the mechanisms already in place in the Constitution of South Australia, as well as an Agreement put forward by Kofi Annan, Secretary-General of the United Nations (1996 – 2006), who sought to unite Cyprus, a conflicted nation divided into two distinct populations (Greek and Turk), a situation not dissimilar from the present status of South Australia. The idea behind Annan's proposal is that with negotiation, it is possible to unite two distinct groups into a federal model. It must be noted that the failure of the Annan proposal in 2004 at referendum, is by no means an inherent fault of the machinery of the proposal framework, bur rather a result of breakdown of the communications between the Greek and Turkish Cypriots, who failed to agree on many aspects of the negotiations.

Recognising that the Draft Proposal at first glance appears revolutionary, the RMHRVS counters that it only advocates what has already been enacted in other former British colonies and would do no more than bring the rights of Aboriginal Australians in line with their counterparts overseas. The Draft Proposal in no way advocates an Aboriginal "secession"; rather it advocates reform of the

Constitutional foundation of South Australia to recognise that British common-law was applied by default to the Aboriginal population at the time of founding, without their express consent. Today's situation is merely the continuation of this "colonial supposition" that the Aboriginal peoples are better off under "white" rule. The Draft Proposal aims to remedy this situation by allowing Aboriginal people to take charge of matters in respect of a wide range of so-called traditional State powers, and to self-administer Aboriginal programs and services, particularly in respect of culture, heritage, education, economic situation, as well as other areas which they may consider to be of interest, by means of their *own* Aboriginal government body.

The Draft Proposal starts with Part 1 discussing previous Aboriginal attempts at advocating treaties or similar judicial change in order to empower Aboriginal people to take their futures into their own hands by means of self-government. In light of the Australian government's failure to respond to calls for a treaty, Part 1 outlines several government attempts to advocate Aboriginal rights, and while recognising their limited success, we outline why they have all ultimately failed to produce Aboriginal self-empowerment. Part 2 continues to describe why Australia needs to enact a treaty or constitutional change, before moving on to outline the main precepts of the Proposal in Part 3. Part 4 consists of the very substance of the Proposal and provides the comprehensive framework towards achieving the self-governance of Aboriginal people in South Australia.

TABLE OF CONTENTS

PART 1: CALLS FOR TREATY AND SUBSEQUENT GOVERNMENT INITIATIVES FOR ABORIGINAL MATTERS

Calls for Aboriginal self-government are by no means new and there have been several attempts to ask the Commonwealth to negotiate a treaty between Australia and Aboriginal peoples:

1. The first attempt dates back to 1979 when 'Nugget' Coombs lead a group of Australians, and lobbied the parliament with a proposal to invite Aboriginal Australians to negotiate a treaty with the Australian government[i];
2. Later, In 1988 Aboriginal leaders presented the Australian government with the *Barunga Statement*[ii] which called for a nationally elected Aboriginal and Islander organisation, a national system of land rights, recognition of customary laws, the development of an international declaration of principles for indigenous rights, and most significantly, a treaty recognising prior ownership, continued occupation and sovereignty and affirming Aboriginal peoples' human rights and freedoms;
3. Again in 2000, Geoff Clark, ATSIC Chairman, repeated the call for a treaty[iii] and received affirmation from the Australian community.

[i] Open letter, Coombs, H. C. et al. 25 August 1979
[ii] *Barunga Statement,* Bark Petition presented to R J Hawke, Prime Minister of Australia, June 1988
[iii] Geoff Clark, Address to Corroboree 2000, Aboriginal and Torres Strait Islander Commission, 27 May 2000

The Australian government has repeatedly ignored these calls for self-empowerment; Howard in 1989 cited that it was a *"monumental disservice to the Australian community"* which *"strikes at the heart of the unity of the Australian people,"* which it is the *"sacred and absolute duty"* of the Parliament to preserve[iv]. To this, the Aboriginal Provisional Government would reply that Australia's Aboriginal people are not Australian Aborigines, but rather Aboriginal Australians. More than semantics, this argument differentiates the Aboriginal status from that of minorities, an issue which is of considerable importance in the realm of international law in respect of the right to self-governance.

The government has instead, since *Mabo No.2* preferred to introduce, or attempt to, alternative constructive arrangements, some of which were in theory positive steps but ultimately failed, while others pure and simply fell short of Aboriginal demands. An exhaustive history is not undertaken here, but it suffices to highlight:

1) 1980 – The Aboriginal Development Commission (ADC) was created to promote Aboriginal economic development. The ADC was to be funded by the Federal government by a *'capital investment account'*, intending to provide the ADC with financial autonomy from the Commonwealth budget. The Government ultimately failed to provide the necessary capital for the Fund, and the ADC and Department of Indigenous Affairs were subsumed in 1990, and replaced by the creation of ATSIC.

2) Created after 2yrs of consultation with Aboriginal peoples, the government established ATSIC, a national body with authority over protection of Aboriginal cultural heritage, advising on policy and programs and administering grants programs for Aboriginal populations. The fundamental and inherent error of ATSIC was its' being a creature of Commonwealth legislation. Although designed to give Aboriginal peoples a voice…WITHIN the (white) Commonwealth framework… the Commission's existence didn't *guarantee* Aboriginal representation; it equalled nothing more than the right of Commonwealth representatives to decide that there *could be* such representation if legislation permitted. We all saw that after 12yrs of administering the annual budget program, the Federal government withdrew its' funding in 2003 and demoted ATSIC to being an 'advisory body', effectively denying the right to Aboriginal representation.

3) In 1991, PM Hawke, in response to the *Barunga Statement*, passed legislation establishing the Council for Reconciliation, a national authority tasked with examining the ways of achieving reconciliation. In 1996, the Council's progress was changed by the new government administration. The new government emphasised welfare and a government takeover of community-controlled programs, once again effectively excluding Aboriginal peoples in the administration of their own lives.

4) In 1993, in response to *Mabo No.2,* the government introduced the *Native Title Act 1993* which was to provide a framework for the resolution of land-claims, confer reparations for lands lost pre-Mabo; and Indigenous Land Corporation (ILC) legislation established a buy-back program for Aboriginal peoples who couldn't re-claim their land under the Native Title process. With the change of government in 1996, the *Native Title Amendment Act 1998* (which suspended the application of the *Racial Discrimination Act 1975* in respect of Native Title laws) was passed effectively:
    i. making customary title subservient in status to non-Indigenous title;
    ii. introducing barriers to Native Title claims;

[iv] Commonwealth Parliamentary Debates, House of Representatives, 11 April 1989: 1328

iii. establishing procedures to develop Aboriginal lands – (*before* resolution of ownership claims !); and

iv. retrospectively validating illegal acquisition of Aboriginal lands in the period 1992 to 1998.

The original legislation was effectively dismantled by 1998. The UN Committee on the Elimination of Racial Discrimination (UNCERD) found that the 1998 Act breached international law and has repeatedly called on the Australian government to suspend the legislation, with no success.

It suffices to say that various government *"good-faith"* efforts have failed to materialise or produce the necessary results. The main problem, as stated below, is that Aboriginal peoples do not have any legal or political clout by which to force the government into negotiations. Their status imminently depends upon the will of government to enact (or overturn) legislation as it sees fit.

PART 2 : THE REALITIES - WHY DO WE NEED A TREATY ?

Prior to European settlement Aboriginal people were living in distinct and self-sufficient communities. Each community had its own language, its own system of law and government and its own territory. As is well known, the subsequent imposition of white man's law, the creation of reserves and the adoption of assimilationist policies undermined these traditional governments and led to growing social dislocation, poverty and dependence. In spite of these policies, the traditional values, identities and allegiances of the Aboriginal peoples endured. Aborigines have long demanded constitutional recognition of their inherent right to govern themselves according to *their* traditions, not European traditions.

Despite clear instructions to Capt. James Cook in 1770 to take possession of areas of Australia *"with the consent of the natives",* no consent was ever sought or given. In respect of South Australia, it was made clear that "*should the Natives occupying or enjoying any lands… not surrender their **right** to such lands by a **voluntary sale**"*, then the Colonizing Commissioners had two duties, namely: One, *"to **secure** to the Natives the full and undisturbed **occupation** or enjoyment of those lands";* and Two *"to afford them **legal redress** against depredations and **trespasses**"*.

By Letters Patent 1836 issued to Governor Hindmarsh in London, the British Crown purported to allow the Colonizing Commissioner to begin embarking British subjects on ships and sail for South Australia, on the condition "*that nothing in these Letters Patent contained shall effect or be construed to effect the **rights** of any Indigenous Natives of the said province to the actual **occupation** or enjoyment in their persons or in the persons of their **descendants** of any lands now actually occupied or enjoyed by such Natives.*[v]"

Clause 35 of the Instructions to the Resident Colonizing Commissioner also required that "*the aborigines are **not disturbed** in the enjoyment of the lands over which they may possess proprietary rights, and of which they are not disposed to make a voluntary sale*" and required "*evidence of the faithful fulfilment of the bargains or **treaties** which you may effect with the aborigines for the cessation of lands.*[vi]"

Nevertheless, in 1889, a fateful ruling of the Judicial Committee of the Privy Council said that Australia was not occupied by conquest or secession, but was *unoccupied, without settled inhabitants or settled law.* Australia was effectively *terra nullius.* This failed to recognise Aboriginal peoples in Australia prior to 1788 did have recognised customary and power structures, inherently overlooking their existence and subjecting them to British law.

Settlers in Tasmania recognised as early as 1820 that a treaty might have been of value in regulating the relationship between the Aborigines and new settlers. Early treaties could have recognised and protected Aboriginal rights.

Early recognition by settlers could possibly even have led to Aboriginal representation at the time of discussions of the Australian federation and creation of the Constitution. In turn, it is most likely that Aboriginal rights would already have been incorporated into Australia's federal structure 100 years ago. Instead, the only reference to Aboriginal Australians in the Australian Constitution as enacted in

[v] C.O. 13/3

[vi] The Select Committee on the Aborigines, Report, 19 September 1860, Legislative Council of the Parliament of South Australia, p.5

1900 were to exclude them from the census and to deny Commonwealth law-making power, both provisions deleted after the 1967 amendment referendum.

It wasn't until *Mabo No.2 (1992)* that the doctrine of *terra nullius* was finally recognised as erroneous, and that the property rights of Aboriginal Australians were finally recognised, significantly later than in other British territories where treaties *were* entered into with Indigenous natives recognising these rights[vii].

Despite the relative milestone achieved in respect of Aboriginal rights, *Mabo* had several shortcomings; namely that it recognised the existence of Native Title rights within the Australian law system, rights which *may* coexist alongside common-law land rights, if not already extinguished by certain leaseholds; rights which pursuant to the *Native Title Act 1993* may be GRANTED, rather than RETURNED (!); rights accorded the status of a *personal right not capable of being transferred or inherited, not a private right.*

Nevertheless, as can be gleaned by the experiences of the other Indigenous peoples whose land rights were recognised much earlier and who are still little better off than Aboriginal Australian people, recognition by a court of rights over land has little real effect on the overall situation of indigenous people. Since *Mabo*, Aboriginal peoples have been preoccupied with the issue of native title claims and the restoration of a land base, while failing to address the fundamental and overarching question of Aboriginal identity and self-government. And here lies the second significant shortcoming of *Mabo* - *Mabo* failed to recognise the legitimate historical grievances of Aboriginal Australians, the existence of their self-government and rights at the time of settlement and today.

While analogous litigation affirming recognition of First Nation land rights in Canadian courts raised public interest which in turn supported the ensuing significant amendment to the Canadian Constitution, *Mabo* failed to follow through with any Constitutional guarantees for Aboriginal peoples.

It is not enough to be satisfied that the Australian common-law has *recognised* the existence of native title… there needs to be a public awareness campaign to drive home the need for Constitutional change, to *guarantee* traditional rights and Aboriginal self-governance and representation. Negotiations for a treaty aim to rectify the abstract yet fundamental problem inherent in Australia's foundation Constitution - that the existence of Aboriginal peoples and their system of law at the time of federation, and today, was overlooked.

In the current framework of the Australian Constitution, the Aboriginal peoples continue to live under pseudo-colonial rule. Government institutions and bodies created to cater to the physical wellbeing of Aboriginal people (development, welfare etc) are but a bandaid on the bigger wound. These institutions provide token Aboriginal representation (eg. ATSIC), funding depends upon government will, and positive legislation can be overturned by the will of the following government administration. The Aboriginal peoples continue to live subject to the will of the non-Indigenous government whose programs are designed to benefit the Aboriginal, while refusing to renounce control.

It has been repeatedly acknowledged that in order to empower Indigenous peoples, it is not sufficient to create government initiatives to their benefit. This equates to no more than a welfare state and the continuation of Indigenous dependence upon a white government. It is by far more important to

[vii] The *Mabo* decision was a long time coming compared to Indigenous rights abroad. American Indians enjoyed self-government since 1823; in Canada, the First Nations raised the issue in 1883 and it was re-affirmed by the Canadian High Court in *Calder ;* In New Zealand, the treaty of Waitangi was signed with the Maoris in 1840.

involve them, and to allow them to self-govern and be economically independent, thus allowing them fundamental self-respect, personal identity and true equality.

The issue in a nutshell is that a Treaty is necessary:

- Firstly, to guarantee a **TRUE RIGHT TO ABORIGINAL REPRESENTATION** (as opposed to the current system whereby a few representatives of Aboriginal origins are elected at State government level) which is NOT dependent upon the wills and whims of parliament;

- Secondly, to allow Aboriginal South Australians to be self-determining. Self-determination is the right to choose one's political status - once the Aboriginal peoples are recognised as being **POLITICALLY SOVEREIGN**, it then falls within their scope of power to negotiate with governments (SA, Australia) in due course the extent of co-existence and co-operation in respect of agreed powers of competence;

- Economic studies during treaty negotiations in Canada concluded that increased control by Canada's First Nations would **BOOST THEIR SELF-SUFFICIENCY** and bring a net financial benefit of between CN$3.8 billion and CN$4.7 billion and between 7,000 and 17,000 jobs in British Columbia over the next 40 years[viii]. The Harvard Project on American Indian Economic Development found that economic success on indigenous lands is closely linked to the power to make decisions.

[viii] Benefits and Costs of Treaty Settlement in Columbia - KPMG Report, 1996
Financial and Economic Analysis of Treaty Settlements in British Columbia - Grant Thornton, 1999

PART 3 : PURPOSE OF THE DRAFT PROPOSAL

The Draft Proposal advocates POLITICAL CHANGE as the key to recognising the ability of the Aboriginal Peoples to self-organise, to self-administer government programs, to self-design a model of Aboriginal representation, particular to their needs and communities. This leads to the "Catch 22" of the Aboriginal People – treaty negotiations have always been stalled on the basis that there is no party with whom to negotiate since Aboriginal peoples are not sovereign. But how can we effect political change to empower their sovereignty, without negotiations?

In brief, the Draft Proposal suggests a campaign of Aboriginal consultation which will result in an Aboriginal representative body, the Council of Aboriginal Peoples(CAP). The CAP will enter into negotiations with the South Australian and Australian governments in an attempt to establish a Framework outlining the scope and topics of negotiation between the parties, in respect of legislative and judicial competences. In parallel, the CAP will consult with the Aboriginal Peoples of South Australia with the aim of identifying the form and manner of organization of an Aboriginal Government, as well as the drafting of an Aboriginal Constitution and Bill of Rights.

This Draft Proposal is a work in progress. Evidently the exact nature, form and extent of a treaty/agreement can not be fully determined until public consultations begin. It is only after public interest is stirred and pubic consultations are concluded that we can proceed to form a clearer idea in respect of just HOW the Treaty/Agreement will work. The outcomes of consultations will give expression to a framework concerning the future of negotiations. Irrespective of the outcome, it is clear that both legislative and Constitutional reform will be required.

The Draft Proposal depends upon 7 R's:

- RECOGNITION *"of the hopes, aspirations and spirit of Indigenous peoples to live in this country, our country, in an equitable society"*
- REFORM of existing laws and Constitutions which lock the future of Aboriginal peoples in the cadre of a non-Indigenous legal system
- RIGHTS in conformity with international and human rights law, of all South Australians to political representation and equality
- RESPECT for the creation of two common provinces and for each other's right to self-governance;
- RECAPROCITY of willingness in an attempt to lead productive negotiations between interested community sectors, governments and people
- RESPONSIBILITY of all Aboriginal and non-Indigenous Australians and institutions to advance, reform and restructure the current situation of Aboriginal alienation
- REPARATIONS for damages suffered by Aboriginal Australians concerning land claims and removed children.

1. FUNDAMENTALS FOR NEGOTIATIONS

Elements considered essential to successful treaty negotiations in South Australia:

- the parties should be committed to the treaty process and have adequate resources to reach agreements;
- the process should be managed in South Australia;
- it should provide a level playing field for all parties;
- South Australia and Aboriginal peoples should be equal partners in the management of the process; and
- the treaty process should encourage effective and efficient negotiations.

Toward these ends, the parties should generally attempt to adopt an interest-based approach to negotiations. They will explore, understand and creatively accommodate the interests and needs that underlie each other's positions.

2. WHAT IS BEING PROPOSED?

Political negotiation is the most constructive and practical means to address the complex issues relating to Aboriginal rights and title. In order to allow Aboriginal communities to shed the dependency created by colonization and increase their self-sufficiency, we propose that an overarching agreement between an Aboriginal Council and the SA government cover three broad subject areas:

- Aboriginal government structures, authorities and related financial arrangements;
- jurisdiction over and ownership of lands, waters and resources; and
- reparations and/or compensation in the form of cash settlements.

Treaties will also have to set out the processes for resolving disputes and making changes to the treaty. Funding for land and cash settlements will be borne jointly by the provincial and federal governments, the responsibility of each which will be the subject of further agreements.

Within the Aboriginal province, it is possible that self-government provisions will differ among the Aboriginal communities. Within the Aboriginal province, there is no template for self-government; each Aboriginal community may establish its own unique self-government arrangement. Self-government provisions may include education, language and culture, health care and social services, police services, housing, property rights and child welfare. Law making powers will pertain to treaty land and the provision of public service, including health care, education and social services. It is expected that the overarching Commonwealth Laws will apply to Aboriginal government(s) just as they do to all other governments.

Taking into account modern exigencies and that Aboriginal populations nowadays include both traditional and urban Indigenous peoples, the Draft Proposal provides for consultations with ALL Aboriginal peoples, and negotiations concerning the extent of Indigenous authority are flexible according to the specific competences in question. Aboriginal communities will also be required to consult with non-Indigenous residents living on treaty land on decisions that directly affect them.

PART 4

FRAMEWORK FOR THE

COMPREHENSIVE SETTLEMENT OF

THE SOUTH AUSTRALIAN PROBLEM

-- DRAFT SIX STAGE PROCESS --

THE LONG-ROAD AHEAD… TOWARDS INDIGENOUS SELF-GOVERNANCE

1. GETTING THE PLAN OUT THERE…. A S.A. ABORIGINAL MOVEMENT

A. Public Awareness and Indigenous Consultations

- Information and Awareness Strategy - There must be a wide spread public awareness campaign concerning the need for an Aboriginal Convention concerned purely with the question of whether Indigenous self-government is a desired objective of Aboriginal South Australians. It is important to note that there are 2 distinct target groups - firstly, the Aboriginal and Torres Strait Islander people and secondly, the general public.
- Political Strategy – to stir discussions concerning possible models of self-governance and the desired extent of self-government

- There must be consultation and public information sessions throughout Aboriginal communities in SA to stimulate thought and discussion on everything ranging from form, manner and extent of the desired self-government, if any.
- This period of consultation and pubic awareness raising must be well-funded to ensure continuity and progression.
- Consultations must include ALL sectors and communities of Aboriginal South Australians – this includes traditional, conservative, integrated, and progressive forces, of all ages and all educations levels.

B. Plebiscite concerning Constitutional (Re-) Arrangement

There is a need for broad Aboriginal support and endorsement for the ides of Constitutional amendment before formal negotiations can occur. Without this there is no mandate to pursue the agenda. Therefore the initial phase of the constitutional campaign will culminate with a plebiscite of Aboriginal and Torres Strait Islander people where their views on the topic will be sought.

2. TOWARDS A STATEMENT OF INTENT TO NEGOTIATE – ANNEXES I, II

In response to the initial period of public awareness and support for the issue at hand, the SA Government will respond with a signed Statement of Intent to Negotiate. The statement will be a legally binding document, which will:

- indicate that the Governor of South Australia has a mandate to enter into and represent its members in upcoming negotiations;
- establish that he has the authority and resources to commence negotiations;
- include a statement of reconciliation, acknowledging past wrongs – see Annex 1;
- include a statement confirming their commitment to negotiating a new political arrangement for South Australia and the "7 R's", of which the need to acknowledge:
    - the existence and legal meaning of the Letters Patent of King William IV, 1836;
    - the fundamental principles of Indigenous self-determination, self-government, and mutual respect;

        - that certain acts and institutions must of necessity be repealed or amended in so far as they limit or are inconsistent with the notion of Aboriginal self-government;
        - that current parliamentary structures and political bodies are non-representative of South Australia's Aboriginal community;
        - an interim Aboriginal Council to be elected at a State Convention, and in due course the Aboriginal Province government, as the true representative body of Aboriginal Peoples;
        - the dismantling of current State committees and bodies created to administer Indigenous Affairs
    - outline the terms for holding in due course the "South Australian Aboriginal State Convention"
    - be signed by the Governor of South Australia, binding the SA Government.

The Statement of Intent expresses a vision of a shared future for Aboriginal and non-Indigenous people. It encapsulates and acknowledges the need to:

- Renew the partnership and bring about meaningful and lasting change in the relationships between Aboriginal and non- Indigenous people;
- Strengthen Aboriginal Governance by supporting Aboriginal people in their efforts to create an effective and accountable government and province and negotiating fair solutions to Indigenous land claims;
- Develop a new fiscal relationship; i.e. arriving at financial arrangements with the Aboriginal Council and government which are stable, predictable, and accountable and will help foster self-reliance; and
- Support strong communities, people and economies, focusing on improving health and public safety, investing in Aboriginal people, and strengthening Aboriginal economic development.

The Statement may best be described as a framework for new partnerships between Aboriginal and non-Indigenous Australians. It is also to be a first step toward more effective working relationships between the SA Government and Aboriginal people. The renewed partnership should develop agendas that respond to their unique needs and circumstances.

3. READINESS TO NEGOTIATE - SA CONVENTION – ANNEX III

The SA Government, together with the SA Aboriginal Movement, must here affirm its' commitment to formal and properly instituted negotiations by holding an Aboriginal Convention.
The Convention provides the appropriate forum for the parties to discuss, debate, and otherwise negotiate the following three issues.

A. Procedural issues concerning future negotiations;
B. Substantive issues such as, a Framework Constitution for a United South Australia, which will, in effect, constitute the cornerstone of the future United South Australia, and the extent of powers claimed by either province and third party interests
C. the election of an Aboriginal Representative Body

A. Procedural Issues

The aim of the Convention is to produce a negotiated agenda for Stage 4 negotiations. It should identify the subjects for and objectives of the negotiations, and establish a timetable and the procedural arrangements for the negotiations.
Examples of procedural arrangements which should be addressed include:

- structure of committees or working groups;
- frequency, location and notice of meetings;
- estimated time to complete Stage 4;
- who is responsible for agendas and record keeping;
- who is to chair the meetings;
- access to and confidentiality of records produced by the parties;
- who is entitled to attend meetings;
- coordination of communications and public information program;
- process for dispute resolution, particularly in the context of a party suspending negotiations;
- each party's proposed ratification procedure to conclude negotiations.

When the Framework Agreement is settled, the agreement may be approved by the respective parties. Framework Agreements must be approved in accordance with the approval processes of the respective parties. The agreement is then signed.

B. Substantive Issues

- Discuss the manner of instituting self-governance – reform of the current Constitutional arrangement? Enacting a federal "United South Australia with two constituent provinces"?
- Identify the Aboriginal peoples and its members.
- Describe the traditional territory involved which will form the Aboriginal province and discuss means of resolving contention concerning contested areas. The governing body should attach a map showing the traditional territory.
- Identify the desires/worries particular to each Indigenous community
- Organise an Interim Representative Body for Aboriginal South Australians - the organization and establishment of a governing body is a decision to be made by the Aboriginal people it represents. "Constituents" are all Aboriginal members, traditional and urban,

wherever they reside. The governing body must describe its organizational structure and how it was established.

- Desired extent of government powers and extent of collaboration with non-Indigenous province - The Convention should identify what will be on the negotiation table by setting out all of the subjects that the parties agree they will negotiate during Stage 4.

- Clarify the future organization of the Aboriginal Province "Government" – several options:
  - traditional government: this may include an organization according to an hereditary system;
  - tribal council: A tribal council may be a political alliance of tribes/communities. It may be organized in a number of ways, such as a governing council appointed or delegated by independent tribes/communities, or as a governing body of all the members of its component tribes/communities. However organized, the constituents must approve the tribal council as the appropriate governing body to conduct negotiations. Where a tribal council's component members are independent communities, the constituents of each community must give the approvals.
  - combination of the above.

C. Culmination of the expression of Aboriginal will - An interim "Council of Aboriginal Peoples" (CAP)

- Hold plebiscite to allow for the Aboriginal expression concerning the above listed subject matters, to best determine how to proceed.
- If so agreed, hold a series of Aboriginal "elections" or the equivalent leading to the creation of an Aboriginal representative body empowered to negotiate with the SA government – this representative body is an Interim Council with defined functions and limited powers as outlined below.
- The representative body must be authorised by its Aboriginal members to negotiate on their behalf with the SA Government the creation of an independent self-governing Aboriginal province, and specifically approving it as the appropriate organization to conduct the negotiations.
- The representative body must describe how its constituents have given it the approval described above. This necessarily involves those constituents with capacity to make decisions (i.e. adult members). In determining whether the constituents have given the required approval, the following guidelines may be considered:
  - there must be clear notice given to all known Aboriginal members that informs them of the specific approval being sought, and
  - all known Aboriginal members should be given an opportunity to participate in the decisions. As a minimum standard, a majority of Aboriginal members who have participated in the decisions must indicate their support for the approval sought.
- Examples of ways for Aboriginal members to participate in decision making include:
  - attending meetings convened in the communities where a significant number of members reside;
  - where members are unable to attend a meeting, they should have an opportunity to express their views in writing -- by mail-in ballot, by appointing a proxy to vote on their behalf or by sending written comments to be considered at the meeting;

- community petitions; and
- consensus processes in combination with other examples described above.

- The interim representative Council is to be recognized in front of the law, by the Governor and the SA Government, as having the powers to negotiate on behalf of their Indigenous members. Nevertheless, the Council is only an INTERIM body, with an estimated life of 2-3 years, or as otherwise necessary to oversee the negotiation and implementation stages of a federal South Australia. It will at any rate be dissolved pursuant to the election of an Aboriginal Constituent Assembly which will become the true representative body of Aboriginal South-Australians in their relations with the SA and Federal Governments (see below).

4. NEGOTIATING A SOUTH AUSTRALIAN FRAMEWORK CONSTITUTION

In brief, the purpose of this Stage is:

- to bring the parties together for an initial meeting;
- to identify third party interests and the need for public consultations; and
- for the parties to commence the necessary substantive preparations.

This is where substantive treaty negotiations begin. This will be the first occasion for the newly elected Council of Aboriginal Peoples (CAP) to sit down with representatives of the SA Government. This stage allows the parties to exchange information and examine in detail the elements outlined at the Convention. The goal is to reach agreement on each of the topics that will form the basis of the Constitution.

At this stage, it is also time for the SA Government to engage in public consultation at the regional and local levels in respect of both:

- the framework Constitution; and
- the specific powers requested by the provinces.

A. PUBLIC CONSULTATIONS AT LOCAL/REGIONAL LEVELS

The SA government must have a formal means of consulting with third parties, including local governments and interest groups. When the parties have everything in place, it will be appropriate to begin negotiating a framework agreement.

The partnerships envisaged in this action plan are broadly based, and should include Indigenous people and organizations, the SA and federal governments, the private sector -- indeed, all Australians.

CONSULTATION/OPENNESS

- Pursuant to agreements concerning how best to proceed, the South Australian Government may create consultation groups or advisory groups. Funding of such groups may be partially or fully borne pursuant to Commonwealth funding agreements.
- On an ad hoc basis, the federal and South Australian governments solicit input from numerous groups to inform and refine their mandates. Local governments will have a voice on the negotiating teams so to advise the State negotiators on local government issues and to participate in negotiations generally.
- Individual communities are also responsible for mounting their own public information initiatives such as: public forums, events, displays, newspaper inserts and question-and-answer sessions. The parties are required to periodically advise a specifically established Treaty Commission of their joint public information program.
- Most main-table negotiations will open to the public and media, and there will be a full public record of those meetings. Members of the public are invited to attend and observe these sessions through advertisements in local media and listing on the Treaty Commission's web site. Many sessions include an open question and answer period.
- However, we anticipate that sometimes negotiators will need closed sessions where the parties can exchange information frankly, brainstorm, explore options and look for solutions in a safe environment away from the spotlight.

B. NEGOTIATING A DRAFT CONSTITUTION – ANNEX IV

The Draft Constitution is, in effect, the cornerstone for all future negotiations. As noted previously, it is based on the Annan solution to the Cyprus problem. It provides the framework for a united federal South Australia, in which the Indigenous and non-Indigenous provinces can co-operate while maintaining a significant degree of autonomy in respect of negotiated subject areas.

This Draft Constitution is a first step towards comprehensive negotiations on outstanding land and self-government issues — in effect the corner stone of a modern relationship of mutual respect between the Aboriginal and non-Indigenous peoples of South Australia.

The Draft Constitution has three main objectives:

1) Dismantling existing departmental structures concerning Indigenous Peoples in SA;
2) Developing and recognising Aboriginal government(s) in SA as being legally empowered to exercise authorities required to meet the needs of the Indigenous Peoples; and
3) Restore to Aboriginal government(s) the jurisdictions consistent with the inherent right of self-governance.

The Constitution:

- defines the main principles upon which the United South Australia is founded;
- defines the equal relationship between the future provinces;
- outlines the powers of either province - Flexibility will be built into the Constitution, thus allowing the SA and Aboriginal governments to adapt to changes that may occur. The Aboriginal Peoples will determine how and when they will enter into and manage the new relationship with SA and Australia;
- identifies the procedures that will be followed in a federal South Australia thus ensuring stable relationships will be established between Aboriginal Peoples and South Australia; and
- sets out a timetable to lay the groundwork for implementation of the necessary constitutional changes.

A distinctive feature of the Constitution is the role of the SA Government. This is important because the Aboriginal People wish to take over many of the governmental functions now being performed by the SA Government. It should be noted that an agreed upon objective of the negotiations is to establish an Aboriginal Province government as the 'primary government' for the delivery of programs and services to residents of the Aboriginal Province.

- <u>Aboriginal body and SA govt to identify and define a range of rights and obligations, including:</u>
  - Legal jurisdiction and powers
  - Existing and future interests in land, sea and resources;
  - Structures and authorities of government;
  - Relationship of laws and intergovernmental relations;
  - Regulatory processes;
  - Amending processes;
  - Dispute resolution;
  - Financial component - to allow Indigenous government to govern as they need;

- Fiscal relations and so on.

OUTCOME: A model Constitution for a federal South Australia with two constituent provinces.

C. NEGOTIATING PROVINCE POWERS AND THIRD PARTY INTERESTS

The parties will need to expand their public consultation in local communities and initiate a program of public information in order to achieve full community feed-back from interested parties and experts.

After agreeing on the Constitution as an appropriate basis on which to proceed, it is then time for the parties to agree on the specific powers of the provinces to be negotiated.

- SA government department delegations to begin negotiations involving specific interest groups, in the following areas:
    1. Natural resources management, including land use planning;
    2. Environmental matters;
    3. Forestry;
    4. Wildlife harvesting and management;
    5. Fisheries harvesting and management;
    6. Education and training;
    7. Social services;
    8. Child welfare, guardianship and adoption;
    9. Health;
    10. Housing;
    11. Heritage resources;
    12. Enforcement and adjudication of laws;
    13. Gaming;
    14. Wills and estates;
    15. Economic development;
    16. Taxation;
    17. Resource revenues, including resource royalties;
    18. Indigenous languages and culture;
    19. Transportation;
    20. Public Works;
    21. Dispute resolution;
    22. Financial payments;
    23. Review and amendment process;
    24. Ratification;
    25. General provisions;
    26. Clarification of rights;
    27. Access;
    28. Expropriation;
    29. National Parks;
    30. Protected areas;
    31. Fiscal arrangements for self-government;
    32. Implementation and transitional arrangements.

5. FINALIZING THE NEW CONSTITUTIONAL ARRANGEMENTS

The ratification of the Constitution formalizes the new relationship among the parties and encapsulates the agreements reached in prior discussions. The establishment of the two constituent provinces now allows for them to choose their internal organisation as they see fit.

The immediate leadership of the Aboriginal province may be continued by the Council of Aboriginal Peoples (CAP), or alternatively, be lead by a newly elected Aboriginal Provisional Assembly (APA). The immediate priorities for the Aboriginal Province are several:

1. Drafting an Aboriginal Constitution
   - Either the CAP or the APA will conduct community consultations with the Aboriginal communities in respect of the Constitutions' content;
   - The Aboriginal Province will conduct a referendum; and
   - The Aboriginal Province will notify the United South Australian government, in writing, of the results of the referendum

   The Constitution will:
   a. Provide for Aboriginal government (see point 3 below), including their duties, composition and membership;
   b. Provide that the Constitution and subsequent negotiations gives the Aboriginal government power to make laws;
   c. Assign to the Aboriginal government the rights, powers, privileges, and responsibilities that are otherwise not specifically assigned to the United South Australia
   d. Provide for the enactment of laws by Aboriginal government;
   e. Provide for challenging the validity of Aboriginal laws;
   f. Provide for urban Aboriginal people, or other means for Aboriginal citizens residing outside of the Aboriginal province to participate in Aboriginal government;
   g. Provide for the establishment of Aboriginal public institutions;
   h. Provide for the role of elders in providing guidance and interpretation of Aboriginal customary law to Aboriginal government;
   i. Provide that in the event of inconsistency or conflict between the Aboriginal Constitution and the provisions of any Aboriginal law, the latter is, to the extent of any inconsistency or conflict, of no force or effect;
   j. Require that Aboriginal government be democratically accountable to Aboriginal citizens and in particular, that:
      i. Elections for Aboriginal government (all levels if so implemented) be held at least every five years; and
      ii. Subject to residency, age and other requirements set out in the Aboriginal Constitution or Aboriginal law, all Aboriginal citizens are eligible to vote in Aboriginal elections and to hold office in Aboriginal government;
   k. Require a system of financial administration comparable to standards generally accepted for Australian governments, through which the Aboriginal government will be financially accountable to Aboriginal citizens;
   l. Require conflict of interest rules comparable to standards generally accepted for Australian governments;
   m. Provide conditions under which the Aboriginal Province may:
      i. dispose of the whole of its' estate or interest in any parcel of its territory; and

ii. from the whole of its territory, create or dispose of any lesser estate or interest in any parcel of Aboriginal traditional land;

n. Recognise and protect rights and freedoms of Aboriginal citizens;
o. Provide that every Aboriginal participant who is an Australian citizen or permanent resident is entitled to be an Aboriginal citizen;
p. Provide for Aboriginal government during the period from the effective date until the date on which the office holders elected in the first Aboriginal elections take office;
q. Provide for amendment of the Aboriginal Constitution; and
r. Include any other provisions as determined by the Aboriginal Province.

Furthermore:

- The Aboriginal Constitution, as approved by an approved ratification procedure, comes into effect on the effective date.
- The Aboriginal Constitution will initially include an amending procedure requiring that an amendment be approved by at least 70% of Aboriginal citizens voting in a referendum.
- Adoption of the Aboriginal Constitution requires the support of at least 70% of those eligible voters who vote in a referendum on the Aboriginal Constitution.

2. Organising the election of an Aboriginal Council;
   - this is to be the representative body of Aboriginal South Australians in all future relations concerning the SA and/or federal government.
   - This body is to be constituted according to the Aboriginal will, and based on a model which is deemed to be appropriate to their values and traditions. Consequently it need not conform to English notions of a “Legislative Assembly” in order to be considered representative government.
   - The administration and initial start-up of the Aboriginal Council and Community Councils are to be supported by the (United) SA Government for a staged period;
   - In the event that an Aboriginal Provisional Assembly was instituted, dissolution of the same is required upon the ratification by SA

3. Organising the internal organisation of the Aboriginal province – according to community councils or as otherwise appropriate. This is a matter of internal governance, and may be modelled according to traditional or English local government models, as the Aboriginal people see fit.

In due time, the newly elected Aboriginal Council will commence negotiations with the U.S.A. Government concerning the drafting of a Bill of Rights Act to implement the human rights duties of the U.S.A. Constitution. The Act is to be of universal application to the United South Australia.

6. IMPLEMENTING THE TREATY

Long-term implementation plans need to be tailored in respect of specific programs or government powers. The plans to implement the treaty will either be put into effect or phased in as agreed. With time, all aspects of the new Constitutional arrangement will be realized and with continuing goodwill, commitment and effort by all parties, the new relationship will come to maturity.

1. On the effective date the Parties will establish a 10 year Implementation Plan which must be signed and will guide the Parties on the implementation of the Constitution.

2. The Implementation Plan:
    a. Identifies obligations and activities arising from the Constitution and subsequent negotiations;
    b. Identifies the manner in which the Parties anticipate fulfilling those obligations and undertaking those activities;
    c. Contains guidelines for the operation of an Implementation Committee to be established for a 10yr period, consisting of representatives of both Parties;
    d. Provides for the preparation of annual reports on the implementation and content of achievements;
    e. Addresses other matter agreed to by the Parties.

3. The Implementation Committee is established to:
    a. Provide a forum for the Parties to discuss the implementation of the United South Australia
    b. Facilitate communication and information sharing among the Parties to assist in the implementation of the Constitution of the United South Australia and Aboriginal government;
    c. Attempt to resolve implementation issues that may arise without limiting the opportunities provided for by Dispute Resolution;
    d. Make amendments to the Implementation Plan;
    e. Develop and provide annual reports on the progress of implementation to the U.S.A. government.

4. The Implementation Committee will establish its own procedures.

5. The Implementation Committee will meet as often as necessary and at least once a year, to carry out its responsibilities.

6. Decisions of the Implementation Committee will require the consensus of its members.

7. On the ninth anniversary of the Implementation Committee's being, the Committee will provide advice to the Parties concerning the implementation of the respective Constitutions beyond the tenth anniversary. If the Committee can not reach consensus on this advice, it will submit the advice of each of its members to the Parties.

Absolute implementation of Aboriginal self-governance concludes with the programmed repeal by the former SA Government of all laws inconsistent with the new Aboriginal Constitution.

ANNEX I - SUGGESTED STATEMENT OF RECONCILIATION

LEARNING FROM THE PAST

As Aboriginal and non-Indigenous Australians seek to move forward together in a process of renewal, it is essential that we deal with the legacies of the past affecting Australia's Aboriginal peoples. The purpose is to learn from our past and to find ways to deal with the negative impacts that certain historical decisions continue to have in our society today.

Sadly, our history with respect to the treatment of Aboriginal people is not something in which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country, we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self-sustaining nations that were disaggregated, disrupted, limited or even destroyed by the dispossession of traditional territory and by the relocation of Aboriginal people. We must acknowledge that the result of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations.
Against the backdrop of these historical legacies, it is a remarkable tribute to the strength and endurance of Aboriginal people that they have maintained their historic diversity and identity. The Government of South Australia today formally expresses to all Aboriginal people our profound regret for past actions of the Australian government which have contributed to these difficult pages in the history of our relationship together.
The SA government especially acknowledges the realities of Federal Government reports including, the "Federal Government's report into Aboriginal Deaths in Custody", 1992 and "Bringing Them Home - Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families" , 1997.
The Government acknowledges the role it played in the development and administration of racist legislation and assimilationist policies. Particularly to those individuals who experienced the tragedy, and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what you experienced was not your fault and should never have happened. To those of you who suffered this tragedy, we are deeply sorry.

Reconciliation is an ongoing process. In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated. The SA Government recognizes that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong country. We must instead continue to find ways in which Indigenous people can participate fully in the economic, political, cultural and social life in a manner which preserves and enhances the collective identities of Aboriginal communities, and allows them to evolve and flourish in the future. Working together to achieve our shared goals will benefit all Australians, Aboriginal and non-Indigenous alike.

ANNEX II - SUGGESTED STATEMENT OF RENEWAL

It is evident that fundamental change is needed in the relationship between Aboriginal and non-Indigenous people in South Australia. The SA Government accepts the Draft Proposal's vision which depends upon:

- *rebuilding Aboriginal nationhood;*
- *supporting effective and accountable Aboriginal government;*
- *establishing government-to-government relationships between SA and the Aboriginal people; and*
- *taking practical steps to improve the living conditions of Aboriginal people.*

It calls for a partnership based on the four principles of mutual respect and recognition, responsibility and sharing. The SA Government agrees that Aboriginal and non-Indigenous people must work together, using a non-adversarial approach, to shape a new vision of their relationship and to make that vision a reality. In that spirit, the SA Government is undertaking to build a renewed partnership with Aboriginal people and their representative government.

The SA Government's vision of partnership means celebrating our diversity while sharing common goals. It means developing effective working relationships with Aboriginal organizations and communities. Above all, it means all levels of government, the private sector, and individuals working together with Aboriginal people on practical solutions to address their needs. Our common aim should be to help strengthen Aboriginal communities and economies, and to overcome the obstacles that have slowed progress in the past.

The SA Government recognizes that meaningful and lasting change will require many years to implement. The renewal of a relationship with Aboriginal people must begin now. The government intends to adopt four closely linked objectives that will guide its commitment to Aboriginal people.

We begin with a commitment to Renewing the Partnerships. SA acknowledges errors in its past relationship with Aboriginal people and the need for healing to occur. The SA Government will work together with Aboriginal people and organizations, local governments, and other partners to develop solutions for the future.
Moving to new solutions means ensuring that the authority, accountability and responsibility of each of the parties are established. It means recognizing traditional customs, including their role in governance; celebrating Aboriginal languages, heritage, and culture; assisting to build the capacity of Indigenous institutions to handle new responsibilities; and working to establish mechanisms to recognize sustainable and accountable Aboriginal governments and institutions.

The government will work with Aboriginal people to help achieve the objective of strengthening Aboriginal Governance. This means helping Aboriginal people make practical arrangements for self-government that are effective, legitimate and accountable; that have the strength to build opportunity and self-reliance; and that can work in a coordinated manner with the non-Indigenous Province. It also means extending co-management arrangements, negotiating acquisition of land and resources through claims processes, and taking steps to improve the claims process.

Helping the Aboriginal government and institutions become effective will require financial arrangements that are more stable, predictable, and accountable and that encourage Indigenous governments to develop their own sources of revenues. To that end, the government will work with Aboriginal partners and with provincial and territorial governments towards the goal of developing a new fiscal relationship.

A renewed partnership will provide the base for working together with Aboriginal people in supporting strong communities, people and economies, so that the promise of a brighter future turns into a reality. The government is committed to addressing social change for Aboriginal people by focusing on improving health and public safety, investing in people, and strengthening economic development. These initiatives will be developed in partnership with Aboriginal people, their communities and governments. All partners have a role in turning these goals into realities.

The SA Government recognizes that off-reserve and urban Aboriginal people also face significant and growing challenges. As a result, many of the initiatives for renewal will apply to all Indigenous people without regard to their status or where they live. Consistent with the government's commitment to a renewed relationship, these initiatives will be developed in partnership with the Aboriginal people and communities affected, as well as local governments.

In a Statement of Intent, the SA Government will set out the details of the agenda for renewal which it intends to implement in partnership with Aboriginal people. Many more practical steps are needed to make this a reality. It will be a long journey, but it is one that offers hope and opportunity for all who are involved, and for South Australia as a whole.

Partners in Design, Development and Delivery

A key element of a renewed partnership is the recognition that Indigenous people must participate fully in the design and delivery of programs affecting their lives and communities. SA government will work with Aboriginal communities and organizations to develop a common vision of the future on priorities for action.
The SA government must also make a concerted effort to develop new and renewed initiatives to consider the needs of Aboriginal people, both urban and traditional, in areas such as employment and training, economic development, health, and youth and children's programs, to the extent that these areas are not exercised by Aboriginal governments.
SA Government will also consider increased support for Aboriginal representative organizations in order to assist them to more effectively represent their members.

I. RECOGNIZING THE INHERENT RIGHT OF SELF-GOVERNMENT

The SA Government recognizes that Aboriginal people maintained self-sufficient governments with sustainable economies, distinctive languages, powerful spirituality, and rich, diverse cultures on this continent for thousands of years. Consistent with developments in international law, with the principles espoused in the United Nations Draft Declaration on the Rights of Indigenous Peoples, and Indigenous movements in former British colonies, the SA government chooses to recognise the inherent right of self-government for Indigenous people.

Today, numerous agreements already exist between Aboriginal communities and various levels of Australian government. Building on this, the SA Government agrees, in the cadre of this Proposal, to

continue to devolve program responsibility and resources to Aboriginal organizations. Responsibility for administering training supports will eventually be devolved through regional bilateral agreements. In due course, the SA and local governments, together with an Aboriginal Council, and Aboriginal organizations will be involved in a number of forums to discuss the ways of addressing the co-existence of Aboriginal self-government aspirations.

In these processes, the SA government is prepared to consider a variety of approaches to self-government, including self-government institutions, devolution of programs and services, and public government. All of these initiatives provide opportunities for significant Aboriginal input into program design and delivery, and should ultimately lead to direct control of programming by an Aboriginal government and institutions.

Recognition of Aboriginal Government

The SA Government will consult with Indigenous organizations and the local governments on appropriate instruments to recognize Aboriginal governments and to provide a framework of principles to guide jurisdictional and inter-governmental relations. Any initiative in this regard will be undertaken only in close consultation with Indigenous and other partners.

Implementing Self-Government

Strengthening Aboriginal governance means working with Aboriginal people and local governments, as well as other partners, to:

- *Build governance capacities;*
- *Affirm a new relationship; and*
- *Continue to address claims in a fair and equitable manner.*

Building Governance Capacity

Noting that many Aboriginal groups require support in order to assume the full range of responsibilities associated with governance, including legislative, executive, judicial and administrative functions, the SA Government acknowledges that negotiation process, particularly in the area of capacity-building, must be improved. To address this, the SA Government intends to include a focus on capacity-building in the negotiating and implementing of self-government.
The government is also prepared to work with Aboriginal people to explore the possible establishment of governance resource centres. These centres could help Indigenous people:

- *develop models of governance;*
- *provide guidance on community consensus building and approaches to resolving disputes;*
- *serve as a resource on best practices;*
- *identify the skills required; and*
- *play a role in supporting capacity development in the areas of administrative, financial and fiscal management.*

Aboriginal Women and Self-Government

Capacity development also means ensuring that Aboriginal women are involved in the consultations and decision-making surrounding self-government initiatives. SA government

recognizes that Aboriginal women have traditionally played a significant role in the history of Aboriginal people and will strengthen their participation in self-government processes. This is particularly relevant for women at the community level. SA government will consider additional funding for this purpose.

Indigenous Justice

The SA Government will continue to discuss future directions in the justice area with Aboriginal people. We will work in partnership with Aboriginal people to increase their capacity to design, implement and manage community-based justice programs that conform to the basic standards of justice and are culturally relevant. We will also work with Aboriginal people to develop alternative approaches to the mainstream justice system, as well as dispute resolution bodies. Programs will require the inclusion of Aboriginal women at all stages.

Professional Development in Land, Environment and Resource Management

The SA Government in partnership with Aboriginal bodies, intends to develop and implement professional development strategies in the following key areas:

- *Law-Making: a primary vehicle for legislative and executive capacity building to equip Indigenous with trained personnel;*
- *Lands and Environmental Stewardship: initiatives will be supported to provide accredited professional development programs;*
- *Land and Resource Management: initiatives will support accelerated transfer to Aboriginal of land management, land registry and survey functions; and*
- *Community Support: specific capacity-development initiatives will be directed at promoting the informed consent of constituents in Aboriginal communities in order to help harmonize progress in governance with how community members understand the changes taking place.*

These initiatives will strengthen Aboriginal capacity in key areas of governance and economic development.

Treaty Commissions

The Canadian experience has shown that an independent treaty commission can be of considerable help in educating the public, as well as in facilitating discussions of treaties, governance, jurisdictional and fiscal issues. The SA Government is prepared to consider the creation of additional treaty commissions to contribute to treaty renewal and the development of self-government where its partners agree that such an approach would be useful.

II: DEVELOPING A NEW FISCAL RELATIONSHIP

SA Government will work in partnership with Aboriginal government to develop a new fiscal relationship which provides more stable and predictable financing, is accountable, and which maximizes the internal generation of own-source revenue.
For Aboriginal people, this means putting in place new fiscal relationships that will allow Aboriginal government to exercise increased autonomy and greater self-reliance through the creation of

expanded new transfer arrangements, Aboriginal fiscal authority, resource-revenue sharing and incentives for enhancing Indigenous own-source revenue capacity.

Funding Arrangements

The fiscal relationship is an equally important issue in current self-government negotiations.
SA Government will introduce new multi-year funding arrangements which give Aboriginal Government flexibility in designing their own programs and allocating funds according to community priorities.
Agreements will transfer the management of specific programs to Aboriginal control.
Future multi-year arrangements will establish clear funding formulas which will provide a stable and predictable flow of revenue to facilitate program and financial planning. The overall aim will be to ensure that programs and services provided by Aboriginal governments and institutions are reasonably comparable to those provided in non-Indigenous communities.
Joint fiscal-relations tables will need to be established in order to facilitate the development of mechanisms for financial government-to-government transfer systems for Aboriginal government. These transfer arrangements are to provide fair, stable and equitable transfers commensurate with responsibilities and circumstances.

Accountability

As recognized government bodies, the Aboriginal government will need to adopt enhanced accountability mechanisms that are comparable to those of other governments in South Australia. Any new fiscal relationship must ensure that Aboriginal government and institutions are accountable to their members through frameworks built on the recognized principles of transparency, disclosure and redress common to non- Indigenous governments. This includes the progressive implementation of government budgeting, internal controls, reporting and auditing standards.
Accountability to both community members and the SA Government will be enhanced through regular reporting of results against defined criteria and periodic evaluation of the effectiveness of financial arrangements with Indigenous government.
In addition to the new priorities for enhancing accountability, there remains the imperative to demonstrate the proper functioning of the existing framework. SA Government will work together with Aboriginal partners to implement increased measures to ensure proper and consistent application of existing accountability regimes.

Own-Source Revenue

Aboriginal government will want to increase their level of financial independence. SA Government support this objective and will work with the Aboriginal government to increase their capacity to generate their own revenue through economic development and internal sources. Models for applying own-source revenue as a contribution to the cost of government will be developed. Resource-revenue sharing with Indigenous communities will also be encouraged.

IV: SUPPORTING STRONG COMMUNITIES, PEOPLE AND ECONOMIES

Supporting healthy, sustainable Aboriginal communities means finding new ways to empower individuals and their communities. Self-government, economic self-reliance, healing and a partnership of mutual respect are the key building blocks.

Well-being is measured by the presence of certain factors that are important to all South Australians. These include the physical environment, such as adequate housing and clean water; access to education and training opportunities; the opportunity to participate in the economy and earn a meaningful livelihood; and access to the health, social and cultural supports needed to ensure that people can remain healthy.

These factors also speak to the importance of building capacity for both individuals and communities. As self-government becomes a reality, Aboriginal communities will require increasingly sophisticated policy and program skills and administrative structures to support good governance. Wherever they live, Indigenous people will want equitable access to culturally relevant programs and services to help improve their own quality of life.

Previous initiatives have provided a measure of progress, but persistent gaps remain between most Indigenous people's quality of life and that enjoyed by most other Australians. It has become increasingly important to focus on some of the key factors that contribute to the circle of well-being for Aboriginal people and their communities. This translates into a concentrated framework for action, to be pursued with Indigenous people and other partners, in three key areas:

- *Improving health and public safety*
- *Investing in people*
- *Strengthening economic development*

ANNEX III - THE FRAMEWORK NEGOTIATIONS AGREEMENT

WHEREAS the Aboriginal Peoples of South Australia assert that the certain territory has been their traditional territory since time immemorial;

WHEREAS the Council of Aboriginal Peoples represent the plurality of Aboriginal peoples in South Australia, including but not limited to the Ngarrindjeri, the Kaurna ……;

WHEREAS in 1834 the Crown proposed to establish a "*province of South Australia*" to be established without notice to its Indigenous inhabitant proprietors, to be "*open to purchase by British subjects*" upon its establishment, the Crown passed the *South Australia Act 1834* declaring certain lands "*waste and unoccupied*"
[s.6, South Australia Act 4&5 William IV, cap.95,]; and,

WHEREAS in December 1835 in London, the South Australian Colonizing Commission raised before the promoters of the said *Province "this declaration of the legislature as absolutely rebutting, the title of any Indigenous inhabitants of the proposed Colony to the occupation of the Soil"*
[C.O.13/3]; and,

WHEREAS on 6 January 1836 in London, the South Australian Colonizing Commission agreed to submit "*arrangements for purchasing the lands of the natives*" of "*the province of South Australia*" to the Colonial Office at the request by letter of the Secretary of State for the Colonies, Lord Glenelg; and,

WHEREAS in their First Report to the Parliament of the United Kingdom the South Australian Colonizing Commission agreed that "*the locations of the colonists will be conducted on the principle of securing to the natives [sic] their proprietary right to the soil*'- so as to require cession of any territory to be "*perfectly voluntary*"
[First Annual Report of the South Australian Colonizing Commissioners, House of Commons, 1836 Sessional Papers 36 No. 491, 39 No. 426, pp. 8-9]; and,

WHEREAS the said arrangements proposed that the Crown of the United Kingdom of Great Britain allow the opening for public sale in England of *"those lands uninhabited or not in the occupation and enjoyment of the Native race" in "the province of South Australia"*; and,

WHEREAS the said arrangements proposed that
*"should the Natives occupying or enjoying any lands comprised within the surveys directed by the Colonial Commissioner not surrender their **right** to such lands by a **voluntary sale**"*; Then in that case the Colonizing Commissioners have two duties, namely: ONE - *"to **secure** to the Natives the full and undisturbed **occupation** or enjoyment of those lands",* and TWO - *to afford them **legal redress** against depredations and **trespasses**"*; and,

WHEREAS by Letters Patent of 1836 issued to Governor Hindmarsh in London, the Crown of the United Kingdom of Great Britain purported to allow the Colonizing Commissioner to begin embarking British subjects upon certain commercial terms on ships and sail for South Australia, on the condition *"that nothing in these Letters Patent contained shall effect or be construed to effect the **rights** of any Indigenous Natives of the said province to the actual **occupation** or enjoyment in their persons or in the persons of their **descendants** of any lands now actually occupied or enjoyed by such Natives*"

[C.O. 13/3]; and,

WHEREAS clause 34 of the Instruction to the Resident Colonizing Commissioner guaranteed that *"no lands which the natives may possess in occupation or enjoyment be offered for sale until previously **ceded** by the natives"*
[The Select Committee on the Aborigines, Report, 19 September 1860, Legislative Council of the Parliament of South Australia, p.5]; and,

WHEREAS clause 35 of the Instructions to the Resident Colonizing Commissioner required that "*the aborigines are **not disturbed** in the enjoyment of the lands over which they may possess proprietary rights, and of which they are not disposed to make a voluntary sale*" and required "*evidence of the faithful fulfilment of the bargains or **treaties** which you may effect with the aborigines for the cessation of lands*"
[op.cit.]; and,

WHEREAS the United Nations recognizes that the inherent right of self-government is an existing right of Indigenous peoples affirmed by Article 1 of the ICCPR, and Article 3 of the Draft UN Declaration on the Rights of Indigenous Peoples*;*

WHEREAS the Indigenous Peoples, Australia and SA agree to negotiate on a government to government basis within the framework of the Constitution of Australia to form the United South Australia pursuant to the Constitution of the United South Australia;

WHEREAS the Parties agree to negotiate in order to set out land, resources, and governance rights to apply in the SA territory;

WHEREAS a Indigenous agreement is in the interest of all South Australians; and

WHEREAS the Parties intend to conduct their negotiations in accordance with this framework agreement;

NOW THEREFORE, the Parties agree as follows:

1. Definitions

In this framework agreement,

- 'Chief Negotiator' means the person designated by each party as the Chief Negotiator;
- 'Certainty' means the objective of the provisions in the Framework Constitution which clarify rights, title, roles, responsibilities and jurisdictions of the parties.
- 'Council of Indigenous Peoples' means the Council elected to lead the negotiations on behalf of Indigenous South Australians.
- 'Convention Agenda' means the collection of provisions initialled by the Chief Negotiators, and signed by the Parties, referred to in 5.2.
- 'Framework Constitution' means the land, resources and governance provisions accepted by the Parties which may be given effect through a variety of mechanisms including the Draft Constitution, legislation, contracts and memoranda of understanding.
- 'Indigenous territory' means the traditional land use area as asserted to by the Aboriginal peoples

- 'The Parties' means the Council of Indigenous Peoples and the SA Government.

2 Objective of negotiations

The objective of negotiations is to complete a Framework Constitution:

(a) Implementing a federal state with two constituent provinces with independent governments which may:

i. make laws and deliver programs and services;
ii. be a public government based internal province laws and customs and other Australian laws and customs;
iii. be the primary government for the delivery of programs and services to residents of province territory within the United South Australia;

(b) describing intergovernmental relationships and jurisdictions;

(c) providing for certainty and clarity of rights respecting land, resources and governance; and

(d) providing for the use, management and conservation of land, water and other resources, including wildlife, fish and their habitat in the Indigenous territory.

3 Roles of the parties

3.1 Prior to beginning negotiations on any subject matter, the Parties will make a presentation of their interests. Roles of the Parties will be determined on the basis of the subject matter and the interests presented.
3.2 The Parties acknowledge that the role of SA will vary depending on the nature of the subject matter and area of jurisdiction or authority being discussed.

4 Subject matters for negotiation

4.1 The following are subjects which the Parties intend to address in their negotiations. The list is not intended to be restrictive and each of the Parties may raise a broad range of topics for negotiations under each subject. Further, any party may raise for discussion any subject matter in addition to the matters listed:

i. Settlement area and tenure of land (Indigenous territory);
ii. Legal status and capacity of Province governments;
iii. Constitution of Province governments;
iv. Models of governance;
v. Intergovernmental relationships;
vi. Province governments liability;
vii. Natural resources management, including land use planning;
viii. Environmental matters;
ix. Forestry;
x. Wildlife harvesting and management;
xi. Fisheries harvesting and management;
xii. Education and training;

xiii. Social services;
xiv. Child welfare, guardianship and adoption;
xv. Health;
xvi. Housing;
xvii. Heritage resources;
xviii. Enforcement and adjudication of laws;
xix. Gaming;
xx. Wills and estates;
xxi. Economic development;
xxii. Taxation;
xxiii. Resource revenues, including resource royalties;
xxiv. Indigenous language and culture;
xxv. Transportation;
xxvi. Public Works;
xxvii. Dispute resolution;
xxviii. Financial payments;
xxix. Review and amendment process;
xxx. Ratification;
xxxi. General provisions;
xxxii. Clarification of rights (certainty in relation to s 35 rights);
xxxiii. Access;
xxxiv. Expropriation;
xxxv. National Parks;
xxxvi. Protected areas;
xxxvii. Constitutional protection for elements of the final agreement;
xxxviii. Fiscal arrangements for self-government;
xxxix. Implementation and transitional arrangements;
xl. Overlaps and rights of other Indigenous people; and

4.2 This framework agreement does not constitute a commitment by any party to reach agreement on all or any of the subject matters in 4.1, nor to agree to all or any provisions proposed in relation thereto.

5 Approval process

5.1 Initialling process

(a) To signify that negotiations with respect to a subject matter are substantially complete, the Chief Negotiators shall initial the provisions.
(b) The Aboriginal Chief Negotiator will not initial provisions until instructed to do so by the CAP.
(c) The initialled provisions may be reconsidered and amended and, if amendments are agreed to, the process in (a) will apply to the amended provisions.
(d) Except for amendments which are minor or technical, the initialling of provisions shall be done at a meeting in the Indigenous territory.

5.2 Approval of the Framework Negotiations

(a) Once all the provisions have been initialled, the Chief Negotiators may review and organize the package for legal and technical review and possible amendments.
(b) When the process in (a) is complete, the Chief Negotiators will initial the Framework Negotiations. They shall submit it to their principals and recommend its acceptance by them.
(c) The Framework Negotiations will be complete once it has been accepted and signed by the Parties.

5.3 Approval of the Framework Constitution

(a) After the Framework Negotiations has been completed, the Parties will work towards completion of the Framework Constitution.
(b) The Framework Constitution will be completed once it has been ratified by the Parties as agreed.

6 Scheduling and timing

6.1 The Parties will use their best efforts to reach agreement with respect to the subjects listed in section 4 within five years from the date of execution of this Framework.
6.2 Upon approval of the Framework Negotiations, the Parties will negotiate towards a Framework Constitution based upon the Framework Negotiations.
6.3 The Parties will use their best efforts to reach a Framework Constitution within two years from the date of execution of this Framework.

7 Openness and public awareness

7.1 The Parties agree that the negotiations will take place in an open and transparent manner.
7.2 The Parties agree that the public should be knowledgeable and well informed regarding the general status, aims, objectives and progress of the negotiations. To that end, the Parties will together develop and implement a program of public information and consultation and will attend meetings with such individuals, groups or organizations as they may jointly agree will assist in the process of building public consensus.
7.3 The Parties may, separately, carry out such additional consultation and communications initiatives as they see fit, including to obtain a broad range of input and consensus.
7.4 Notwithstanding the desire to keep the public informed, the Parties may agree that details of positions and documents exchanged or developed by the Parties during negotiations will be confidential. In such an event those details or documents shall not be disclosed except as required by law.
7.5 The Parties commit to educating each other throughout the process of negotiations.

8 The negotiations process

8.1 The Parties commit to a process that fosters an open exchange of ideas, the frank discussion of interests that underlie positions and the joint analysis of problems. As a general principle, informal discussions are encouraged and statements, whether written or oral, will be without prejudice and will not be attributable to the party making them. It is recognized that from time to time statements may be qualified as being positions.
8.2 The Parties agree that it is desirable that the negotiations proceed at a pace which allows for the people of the Indigenous territory, and particularly the Elders, to remain fully informed and involved in the process. To this end, while the Parties agree that the negotiations should proceed as expeditiously as possible, they also agree that the negotiations may proceed in stages toward agreement on priority agenda items.
8.3 Subject to 8.2, the Chief Negotiators may establish ad hoc working groups to research and report on specific issues or concerns as they deem fit. Working groups may be established to address issues which have particular importance to a particular community or communities including boundary and overlap issues. Any such working groups will report to the main negotiations table.

8.4 Unless otherwise agreed to by the Chief Negotiators, the negotiating sessions will take place in the Indigenous territory.

(a) When sessions are held in the Indigenous territory, the CAP willl host the negotiations;
(b) If sessions are held outside the Indigenous territory, SA will host the negotiations;

8.5 Unless otherwise agreed to by the Chief Negotiators, the negotiating sessions will not be formally chaired.
8.6 Should an impasse in negotiations be reached, any party may request facilitation. The Parties shall equally share the costs of facilitation.

9 Funding

9.1 SA undertakes to provide funding to the CAP to finance the costs of their participation in the negotiations according to Australia's funding policies and initiatives related to land, resources and self-government negotiations and subject to yearly appropriations of funds by Parliament for this purpose. The budget for the CAP's participation will be established on submission of annual joint work plans that set out mutually-agreed upon milestones.
9.2 Before the Framework Constitution is completed an implementation plan shall be developed by the Parties that will provide bridge funding for specific activities that will occur after the signing of the Framework Constitution, but before it comes into effect.

10 Interpretation of this Agreement

10.1 Nothing in this framework agreement is to be interpreted as creating, recognizing or denying rights or obligations, including funding obligations, on the part of any of the Parties.
10.2 All negotiations pursuant to this framework agreement and all related documents, except for the Framework Constitution once it has been brought into effect, are without prejudice to the legal position taken by the Parties in any legal proceeding and shall not be construed as admissions of fact or liability.
10.3 This framework agreement is not legally binding and is without prejudice to the legal positions of the Parties.

11 Amendment

This framework agreement may be amended with the written consent of the Parties.

ANNEX IV - PREAMBLE AND DRAFT CONSTITUTION

PREAMBLE

i. *Recognising that the Indigenous people /ABORIGINAL DESCENDANTS have lived in South Australia since time immemorial;*

ii. *Affirming that South Australia is our common home and recalling that we were co-founders of the Province established in 1836;*

iii. *Resolved that the tragic events of the past shall never be repeated and renouncing forever the threat or the use of force, or any domination by or of either side;*

iv. *Aware that the ABORIGINAL DESCENDANTS has never entered into a treaty with Australia or South Australia;*

v. *Considering the efforts of the ABORIGINAL DESCENDANTS to seek a just and equitable recognition of their rights and a settlement of the land question since the arrival of the British Crown, including the preparation of the Proclamation of the Time Immemorial Ngarrindjeri Dominium and Petition presented to* Her Majesty Queen Elizabeth II *and* Her Excellency Marjorie Jackson-Nelson, Governor of South Australia, dated *17 December, 2003;*

vi. *Acknowledging Australian High Court jurisprudence which recognizes the existence of native title in respect of Australian land;*

vii. *Acknowledging each other's distinct identity and integrity and that our relationship is not one of majority and minority but of political equality where neither side may claim authority or jurisdiction over the other;*

viii. *Deciding to form a new partnership on that basis and determined that this new bi-zonal partnership shall ensure a common future in friendship, peace, security and prosperity in a sovereign and united South Australia;*

ix. *Underlining our commitment to Commonwealth and international law and the principles and purposes of the United Nations;*

x. *Committed to respecting democratic principles, individual human rights and fundamental freedoms, as well as each other's cultural, religious, political, social and linguistic identity;*

xi. *Determined to maintain special ties of friendship with, and to respect the balance between, Australia, its constituent governments, and the United Kingdom, within a peaceful environment between the Pacific and the Indian Ocean;*

xii. *Looking forward to freely and equitably joining the Commonwealth of Australia, and to the day when the founding power for South Australia, the United Kingdom, joins the European Union;*

xiii. Desiring to establish certainty in respect of all matters referred to in this Constitution and to finally empower Indigenous Australians to organise their self-government and take their future in their hands;

We, the acceding Indigenous and non-Indigenous South Australians, exercising our inherent constitutive power, by our free and democratic, separately expressed common will, adopt this Draft Constitution.

MAIN ARTICLES

Article 1 The new state of affairs

1. This Constitution establishes a new state of affairs in South Australia and will form the basis for concluding any further negotiated Constitutions between the Aboriginal and non-Indigenous of South Australia.

2. This Constitution and any treaties or further agreements attached hereto will upon ratification bind South Australia and any attached legislation will apply upon entry into force of this Constitution.

3. The unilateral acknowledgement of British subjectivity accorded the Aboriginal people in South Australia in the *Letters Patent 1836* at the founding of South Australia remains in force and shall apply *mutatis mutandis* to the new state of affairs.

4. A United South Australia will be a full member of the Commonwealth of Australia as of 1 July 2010.

5. The United South Australia will respect the Commonwealth balance established by the *Australian Constitution of 1901* and this Constitution, and as a member state of the Commonwealth of Australia will support the accession to the Union of all South Australian Aboriginal communities.

6. Any unilateral change to the state of affairs established by this Constitution, in particular the United South Australia in whole or in part with any other country or any form of partition or secession except as provided by the Constitution of the Commonwealth of Australia, is prohibited. Nothing in this Constitution shall in any way be construed as contravening this prohibition.

Article 2 The United South Australia, its' Union Government, and constituent states

1. The status and relationship of the United South Australia in respect of the Australian federal government and other constituent states of the Commonwealth remains unchanged and the existing constitutional division of powers between federal and state government remains intact.

2. The status and relationship of the United South Australia in respect of its' non-Indigenous Province may continue to be a relationship balanced between state and local governments if so decided.

3. The status and relationship of the United South Australia in respect of its' Indigenous Province is modeled on the relationship of Switzerland, its' federal government and its' cantons, and will be regulated by the Constitution of the United South Australia (Annex 4) Accordingly:

    a. United South Australia is sovereign state in the form of an indissoluble partnership, governed by the Constitution of the United South Australia, with a Union Government and two equal constituent provinces, the Indigenous and the non-Indigenous provinces, to be organized internally according to their respective Constitutions. The United South

Australia, as a member state of Australia, is bound and has a single legal personality and sovereignty within the Commonwealth of Australia. United South Australia is organised under its Constitution in accordance with the basic principles of rule of law, democracy, representative government, political equality, bi-zonality, and the equal status of its' constituent *provinces*.

b. The Union Government sovereignly exercises the legislative powers specified in the Constitution of the United South Australia which shall ensure that South Australia can speak and act with one voice in the Commonwealth of Australia, fulfill its obligations as a Commonwealth member state, and protect its integrity, borders, resources and heritage of both the *Indigenous* and non-Indigenous peoples.

c. The constituent provinces are of equal status, and may freely organise themselves pursuant to individual internal Consitutions while respecting the limits of the Constitution of the United South Australia. Each province is free to pursue negotiations with the Union Government in respect of the extent of their legislative autonomy.

d. Pursuant to Article 2(3)(c), in the case of an inconsistency between laws, where a province reserves itself a discretion to legislate in respect of specific areas listed at Article 15(5) of the Draft Constitution, Union laws will prevail to the extent of an inconsistency with province laws; where a province reserves a discretion to legislate in specific areas listed at Article15(6), province laws prevail to the extent of an inconsistency over Union laws.

4. The constituent provinces will cooperate and co-ordinate with each other and with the Union Government, by means which include but are not limited to Cooperation Agreements, and Union Constitutional Laws approved by the Union Parliament and both constituent province legislatures or respective decision making bodies. In particular, the constituent provinces shall partiCAPate in the formulation and implementation of policy in external relations and Commonwealth affairs on matters within their sphere of competence, in accordance with Cooperation Agreements. The constituent provinces may maintain external commercial and cultural relations in conformity with the Union Constitution.

5. The Union Government and the constituent *provinces* will fully respect and not infringe upon the powers and functions of each other. There will be no hierarchy between union and constituent province laws other than as provided for in the Draft Constitution. Any act in contravention of the Union Constitution will be null and void. Inconsistencies between Union and constituent province laws are reconciled pursuant to the Draft Constitution which outlines the areas in respect of which constituent provinces may reserve the authority to legislate, or may forego the option to legislate.

6. The Constitution of United South Australia may be amended by separate majority of the voters of each constituent province in accordance with the specific provisions of the Constitution.

7. No Bill or Act of Union Parliament can overturn the existence of constituent province governments unless such decision has been requested by the absolute majority of the respective province government, and only after public consultation and a referendum within the respective province.

Article 3 Citizenship, residency and identity

1. There is a single Australian citizenship.

2. All South Australian residents, both indigenous and non-indigenous, will enjoy a civic status particular to one of the internal constituent provinces, accorded pursuant to each provinces' civic criteria. This status will complement and not replace Australian citizenship.

3. Other than in elections of *members of the Legislative Council*, which shall be elected by *Indigenous* and non-Indigenous South Australians separately, political rights at the Union level shall be exercised based on internal constituent province civic status. Political rights at the constituent province and local level shall be exercised at the place of permanent residency.

4. To preserve its identity, South Australia may adopt specified non-discriminatory safeguard measures in conformity with the international obligations to which Australia has become a signatory and generally accepted international law standards in respect of immigration of Indigenous and non-Indigenous nationals.

5. To preserve its identity, a constituent province may adopt specified non-discriminatory safeguard measures, in conformity with the international obligations to which Australia has become a signatory and generally accepted international law standards in respect of the establishment of residence by persons not holding its internal constituent state civic status.

Article 4 Fundamental rights and liberties

1. Respect for human rights and fundamental freedoms are enshrined in the Draft Constitution. There will be no discrimination against any person on the basis of his or her gender, ethnic or religious identity, or internal constituent province civic status.

2. Freedom of movement and freedom of residence may be limited only where expressly provided for in this Constitution.

3. Indigenous and non-Indigenous South Australians living in specified areas in the other constituent province will enjoy cultural, religious and educational rights and will be represented in the constituent province legislature.

4. Indigenous and non-Indigenous South Australians, irrespective of their location, share equal rights to a decent standard of heath, to education, to housing and essential services, and access to programs concerning all of the above.

5. The rights of religious minorities, including but not limited to the Islamic, the Buddhist and the Orthodox, will be safeguarded in accordance with international standards, and include cultural, religious and educational rights as well as representation in Union Parliament and constituent province legislatures or the equivalent decision making body.

Article 5 The Union Government

1. **The Union Parliament** is composed of two chambers, the Legislative Council and the Legislative Assembly.

    a. The Parliament and Chambers exercise their legislative powers in conformity with the existing constitutional division of powers between federal and state governments and in so far as they relate to laws of general application, except in respect of certain subjects as defined in the Indigenous Province Constitution, agreed pursuant to negotiations between the constituent Indigenous province and the Union Government.

    b. Each Chamber shall have 48 members. The Legislative Council shall be composed of an equal number of Indigenous and non-Indigenous South Australians. The Legislative Assembly will be composed in proportion to persons holding internal constituent province civic status of each constituent province, provided that each constituent province shall be attributed no less than one quarter of seats.

    c. Decisions of Union Parliament shall require the approval of both Chambers by simple majority, including one quarter of voting Senators from each constituent province/state. For specified matters, a special majority of two-fifths of sitting Senators from each constituent province will be required.

2. **The Office of Head of State** is vested in the United Executive Council, which shall exercise the executive power:

    a. The United Executive Council shall be elected on a single list by special majority in the Senate and approved by majority in the Union Assembly for a five year term. It shall comprise six voting members and additional non-voting members should Union Parliament so decide. The composition of the United Executive Council shall be proportional to the number of persons holding the constituent province/state citizenship status, though no less than one-third of the voting members and one-third of any non-voting members of the Council must come from each constituent province/state.

    b. The United Executive Council shall strive to reach decisions by consensus. Where it fails to reach consensus, it shall, unless otherwise specified, take decisions by simple majority of members present and voting, provided this comprises at least one member from each constituent state.

    c. Notwithstanding voting rights, the members of the United Executive Council will be equal. The Council shall decide on the attribution of Departments among its members.

    d. Unless the United Executive Council decides otherwise, it shall elect two of its' members, not hailing from the same constituent state, to form a Co-Presidency and rotate every twenty months in the offices of President and Vice-President of the Council. The member hailing from the more populous constituent province shall be the first President in each term. The President, and in her/his absence or temporary incapacity, the Vice-President, shall represent the Council as Head of State and Head of Government. The President and Vice-President shall not enjoy a casting vote or otherwise increased powers within the Council.

e. The heads of government of the constituent provinces shall be invited to partiCAPate without a vote in all meetings of the Council in the first ten years after entry into force of the Constitution, and thereafter on a periodical basis.

3. The Office of the Attorney-General, the Office of the Auditor-General, the Office of the Ombudsman, and any other mechanisms implemented at Union level shall be independent.

Article 6 The Supreme Court

1. The Supreme Court of the United South Australia will uphold the Draft Constitution and ensure its full respect.

2. It will comprise an equal number of judges from each constituent province, and three additional judges who are not residents of the United South Australia until otherwise provided by law.

3. The Supreme Court, after all internal methods of dispute resolution as defined by the Draft Constitution have been exhausted where appropriate, shall, *inter alia*, resolve disputes between the constituent provinces or between one or both of them and the Union government, and resolve on an interim basis deadlocks within Union institutions if this is indispensable to the proper functioning of the Union Government.

4. The Supreme Court may not intervene with the rights and reviews of legislation passed by either constituent province, unless this is provided for in the respective Constitutions of either constituent province.

Article 7 Transitional Union and Province institutions

1. The union institutions shall be in place upon entry into force of the Draft Constitution, and shall evolve in their operation during transitional periods.

2. The transitional constituent province legislatures, executives and judiciaries or their equivalents, shall be in place upon entry into force in accordance with this Draft Constitution.

3. At the Union level, the office of Head of State shall be vested in the Co-Presidency of the United Executive Council. The Union Government shall be composed of a Council of Ministers of six members (three Indigenous and three non-Indigenous South Australians). Delegates from each constituent province parliament shall sit in the transitional Union Parliament (24 Indigenous, 24 non-Indigenous) and in the Australian Commonwealth Parliament (six Indigenous, six non-Indigenous).

4. There shall be general elections at constituent and Union levels on _____, after which the constituent province and Union government shall operate regularly, though the Co-Presidency at the Union level, and will rotate every 10 months during the first term of the United Executive Council.

5. The Supreme Court shall continue its previous functions in so far as they are not contrary to anything in the Draft Constitution, as well as assuming its' new functions upon entry into force of the Draft Constitution.

Article 8 Constituent state boundaries and territorial adjustment

1. The territorial boundaries of the constituent provinces will be agreed on in preliminary negotiations.

2. Efforts to finalise the extent of Indigenous areas will be based on the Letters Patent 1836, as well as evidence of traditional use and occupancy of the land concerned, rather than its' ownership or title. The continuation of existing land uses, interests, encumbrances and so forth will become the object of negotiations and Constitutions between the Indigenous Province and the parties concerned.

3. Areas subject to territorial adjustment which are legally part of the Indigenous province pursuant to Letter Patent 1836 upon entry into force of this Draft Constitution shall be administered during an interim period by the non-Indigenous province. Administration shall be transferred under the supervision of a specially established Land Council to the Indigenous Province according to a time frame to be negotiated between the interested parties. This includes the transfer of administration of largely uninhabited areas contiguous with the remainder of the Indigenous Province. The Land Council supervision of activities related to territorial transfer shall be enhanced in the last months before handover of specified areas as outlined in the Constitution. The Land Council will hear disputes arising in respect of territorial claims.

Article 9 Land Claims in the United South Australia

1. The Final Constitution will constitute the full and final settlement of land claims within the former territory of South Australia, brought by the Indigenous People of South Australia under the *Native Title Act (Cth) and corresponding State legislation.*

2. The current or pending claims of indigenous persons who were dispossessed of their land by events prior to entry into force of this Draft Constitution shall be resolved equitably in a comprehensive manner in accordance with international law, respect for the individual rights of dispossessed owners and current users, and the principle of bi-zonality.

3. Land claims shall be received and administered by an independent, impartial Land Board, governed by an equal number of members from each constituent province, as well as non-Indigenous members. The Land Board shall be organized into branches in accordance with sound economic practice. No direct dealings between individuals shall be necessary.

Article 10 Reconciliation Commission

1. An independent, impartial Reconciliation Commission shall promote understanding, tolerance and mutual respect between Indigenous and non-Indigenous South Australians.

2. The Commission shall be composed of men and women, in equal numbers from each constituent province, as well as at least one non-Indigenous member, which the Governor of

the United South Australia is invited to appoint in consultation with the Union Government and the constituent provinces.

Article 11 Past acts

1. Any act, whether of a legislative, executive or judicial nature, by any authority in the present day South Australia whatsoever, prior to entry into force of this Constitution, is recognised as valid and, provided it is not inconsistent with or repugnant to any other provision of this Draft Constitution, the Constitutions of either internal constituent province, the Constitution of the Commonwealth of Australia 1900 or international law[ix], its effect shall continue following entry into force of this Constitution.[x] No-one shall be able to contest the validity of such acts by reason of what occurred prior to entry into force of this Constitution.

2. Any claims for liability or compensation arising from acts prior to this Draft Constitution shall, insofar as they are not otherwise regulated by the provisions of this Constitution, be dealt with by the constituent province from which the claimant hails, or failing this, the Supreme Court.

Article 12 Entry into force and implementation

1. This Constitution shall enter into force upon approval by each side at separate simultaneous referenda conducted in accordance with the Draft Constitution and the signature by a specially established Aboriginal Constituent Council, South Australia and the Commonwealth.

2. This Constitution shall be implemented in accordance with the binding timeframes laid down in the various parts of the Constitution and reflected in a calendar of implementation.

3. Implementation will consist of the establishment of an Implementation Planning Fund, an Indigenous Province Fund, an Indigenous Training Trust and Committee.

Article 13 Annexes

The above main articles are reflected in detailed legal language in the Draft Constitution which follows.

[ix] **Observation**: The criterion of inconsistency with or repugnance to international law refers to any act which by its nature is contrary to international law. This reference, like the whole Article, is without prejudice to the question of the legitimacy or status of the relevant authorities under international law.

[x] **Observation**: Matters of internal citizenship, immigration, and properties affected by events since 1836 are dealt with in a comprehensive way by this Constitution; any validity of acts prior to entry into force of this Agreement regarding these matters shall thus end unless they are in conformity with the relevant provisions of this Draft Constitution.

PART I: BASIC ARTICLES

Article 1 The United South Australia

1. The United South Australia is a dependent and sovereign federal state within the single international legal personality of Australia, consisting of two constituent provinces, the Indigenous State and the non-Indigenous State.

2. The independence, territorial integrity, security, and constitutional order of the United South Australia and its' provinces will be safeguarded and respected by all.

3. The union of the United South Australia in whole or in part with any country, other than the Commonwealth of Australia, any form of partition or secession except as provided by the Constitution of the Commonwealth of Australia, or any other unilateral change concerning the state of affairs as established by this Draft Constitution, is prohibited.

4. The United South Australia will be organised under this Constitution in accordance with the basic principles of rule of law, democracy, representative government, political equality of Indigenous and non-Indigenous South Australians, bi-zonality and the equal status of the constituent provinces.

Article 2 The constituent provinces

1. The constituent provinces are of equal status. Each constituent province exercises its authority within the limits of this Constitution and their territorial boundaries if not already settled, will be the subject of future negotiations, with the resulting maps to be annexed to the eventual Final Constitution.

2. The identity, territorial integrity, security and constitutional order of the constituent provinces will be safeguarded and respected by all.

3. The constituent provinces may organise themselves freely within the limits of this Constitution and in conformity with the basic principles of rule of law, democracy, and representative government under their own Constitutions.

Part II: GENERAL PROVISIONS

Article 3 Union Constitution as supreme law

1. This Draft Constitution, having been democratically adopted by Aboriginal and non-Indigenous South Australians through their separately expressed common will, is the supreme law of the United South Australia and is binding on all Union authorities and the constituent provinces. Any act by the Union Government or either constituent province in contravention of this Constitution shall be null and void.

2. The Union Government shall fully respect and not infringe upon the powers and functions of the constituent provinces under this Constitution. Each constituent province will fully respect and not infringe upon the powers and functions of the Union government or the other

constituent provinces under this Constitution. There shall be no hierarchy between Union and constituent province laws other than as provided by this Draft Constitution or those of the respective constituent provinces[xi].

3. The Supreme Court shall uphold this Constitution and ensure its full respect by other Union organs and the constituent provinces in so far as it is competent to do so.

Article 4 Rule of law

1. The law is the basis of and limitation for all acts of government at all levels.

2. Concerning the application and implementation of Anglo-Australian law, including jurisprudence, the common law and all acts of government, all levels of government will adhere to the principles of public interest, proportionality and good faith.

3. As far as applicable, the Union Government as well as the constituent provinces shall respect international law, including all treaties binding upon United South Australia, which shall prevail over any Union or constituent province legislation.

Article 5 Secular nature of United South Australia

1. United South Australia, its Union Government and its constituent provinces are secular.

2. Religious functionaries shall not hold elected or appointed political or public office.

3. The term “Religious Functionary” does not extend to include Aboriginal tribal elders who exercise political and spiritual roles in Indigenous society.

Article 6 Seat of the Union Government

The seat of the Union Government will be greater Adelaide.

Article 7 Flags and anthems

1. The flag of the United South Australia will be the subject of public consultation and referendum

2. This flag shall be flown alone or together with the Australian flag on Union government buildings.

3. The constituent provinces may have their own anthems and flags. The constituent province flags shall be flown on constituent province government buildings, along with and in the same manner as the flag of the United South Australia. No other flags shall be flown on constituent province government buildings or public property, except in accordance with a law of the Commonwealth of Australia or a law of United South Australia[xii].

[xi] **Observation:** This Constitution gives the Supreme Court power to determine the validity of any law.

[xii] **Clarification:** This does not prevent the flying of national flags on the occasion of official visits by foreign dignitaries.

Article 8 Official languages and promulgation of official acts

1. The official language of United South Australia is English. All persons shall have the right to address the Union authorities in the official language and to be addressed in that same language. The use of Aboriginal tongues for official purposes shall be regulated by law.

2. Legislative, executive, administrative and judicial acts and documents of the Union Government shall be drawn up in the official language and shall be promulgated by publication in the official Gazette of United South Australia in the official language and any others agreed upon.

3. To maintain equality in educational qualifications and standards between the school systems of the constituent provinces, the official language of the education system from pre-school to Grade 12 is to be used, except to the extent that the constituent provinces reserve to themselves the right to legislate in respect of teaching Aboriginal language and culture.

Article 9 Official Holidays of United South Australia

1. The Official State Holiday of United South Australia shall be the day of the referenda on the Draft Constitution.

2. In addition to Sundays, the following minimum official holidays will be observed in United South Australia:
    a. 1 January (New Year's Day);
    b. 26 January (Australia Day);
    c. 2nd Monday of March (Adelaide Cup Day)
    d. Good Friday
    e. the day after Good Friday;
    f. Easter Monday;
    g. 25 April - Anzac Day
    h. 26 May (Human Rights Day of Healing and Reconciliation);
    i. Mid-winter (Indigenous Nation day)
    j. 2nd Monday in June (Queen's Birthday and Volunteers Day)
    k. 1st Monday in October (Labour Day);
    l. 25 December (Christmas)
    m. 26 December (Proclamation Day)

3. Each constituent province shall determine and observe its own holidays in addition to those of United South Australia. Such holidays shall respect the spirit of the Foundation Agreement and the new relationship between Indigenous and non-Indigenous South Australians.

4. Union public servants shall be entitled to observe, in addition to the above, the official holidays of either one constituent state or the other.

Part III: FUNDAMENTAL RIGHTS AND LIBERTIES

Article 10 Fundamental Rights

1. In accordance with Article 4(3) of this Constitution, and Australia's obligations under international law, the United Nations International Covenant on Civil and Political Rights and Optional Protocols, as well as the United Nations International Covenant on Economic, Social and Cultural Rights will be brought into force in United South Australia, thus forming an integral part of this Constitution (catalogue attached).

2. There shall be no discrimination against any person on the basis of his or her gender, ethnic or religious identity, or internal constituent province civic status.

3. There shall be freedom of movement and freedom of residence throughout United South Australia in accordance with Section 92 of the Constitution of the Commonwealth of Australia, except as otherwise expressly provided by valid provision of this Draft Constitution or a Union Constitutional Law.

4. The rights of religious minorities, including but in no way limited to the Islamic, the Buddhist and the Orthodox, shall be safeguarded. The Union Government and the constituent provinces will, within their respective spheres of competence, afford minorities the status and rights foreseen in the European Framework Convention for the Protection of National Minorities, in particular the right to administer their own cultural, religious and educational affairs and to organize to be represented in the province legislatures.

5. Constituent provinces will ensure that communities of Aboriginal South Australians residing in the non-Indigenous province who are not Non-Indigenous citizens and non-Indigenous South Australians residing in the Indigenous province who are not Indigenous citizens shall, within the constituent province in which these communities are situated enjoy the right to:

    a. to administer their own cultural, religious and educational affairs if so desired;
    b. to be represented in the constituent province legislature and subordinate elected bodies whose activities directly and significantly affect them;
    c. to be consulted on matters which directly and significantly affect them; and
    d. to avail themselves of any internal mechanisms allowing them to appeal or seek review of administrative decisions of the province in which they are resident which affect their interests

6. The Draft Constitution will not affect the rights of the government, individuals or corporations of either constituent province to apply for or bid on any commercial, economic or other activity or project for which they would otherwise be eligible.

Article 11 Citizenship

1. There is a single Australian citizenship.

2. All residents of the United South Australia will also enjoy a civic status particular to either constituent province as provided for by Constitutional Law or the internal constitutions of the

respective provinces. Such status is complementary to and does not replace Australian citizenship, nor does such internal civic status confer or deny rights or benefits under any commonwealth law. Only United South Australian citizens may enjoy the civic status of an internal constituent province.

3. Where any provision of this Draft Constitution refers to the origins of a person (or where a person hails from), the criterion shall be the holding of a civic status particular to an internal constituent province. No one may hold the civic status of both constituent provinces.

Article 12 Exercise of political rights

Australian citizens who are at least 18 years old will enjoy political rights at the Union level and exercise them based on their particular constituent province civic status.

Part IV: THE UNION GOVERNMENT AND THE CONSTITUENT PROVINCES

Article 13 Competences and functions of the Union Government

1. The Union Government may, in accordance with the division of powers in the Constitution of Australia 1901 and this Draft Constitution, and in the absence of concluded negotiations between either or both internal constituent states and the Union Government pursuant to Article 14, exercise exclusive legislative and executive competence in respect of the following matters:
    a. Education
    b. Traffic and transportation
    c. Administration of justice and law enforcement, including but not limited to police, prisons and correctional facilities
    d. Public order, peace and safety
    e. Provision of health and social services, including but not limited to hospitals and public housing
    f. Emergency situations
    g. Agriculture and natural resources
    h. Intoxicants

2. Incidental to the above competences and to other provisions of this Draft Constitution, the Union Government will exercise exclusive legislative and executive competences over:
    a. Union administration (including public service, Union police, as well as its independent institutions and officers);
    b. The seat of Union government;
    c. Union elections and referenda;
    d. Offences against Union laws;
    e. Administration of justice at Union level;
    f. Union property, including public works for Union facilities and expropriation; and
    g. Like matters which are clearly incidental to the specified powers of the Union government.

3. The Union government may, as appropriate, entrust the implementation of its laws, including the collection of certain forms of taxes, to constituent province authorities.

4. Obligations of United South Australia under Commonwealth laws will be implemented by the Union Government or constituent province authority which enjoys legislative competence in the subject matter to which the commonwealth law pertains.

5. The Union Government shall confer upon the constituent provinces either all or a portion of commonwealth grants provided to them with a specific purpose, to the extent that the constituent provinces have reserved to themselves the competence in that specific area.

6. The Commonwealth and Union governments will also provide the provinces with financial help in establishing their own government and public programs pursuant to financial transfer agreements to be negotiated pursuant to Article 17.

Article 14 Constituent Provinces – competences, functions and coexistence between laws

1. The full exercise of jurisdiction and authority of a province government may evolve over time pursuant to negotiations between the Union and constituent province governments.

2. Pursuant to Art.14(1), the constituent provinces may, within the limits of this Constitution and negotiations concluded with the Union government, exercise within their territorial boundaries either exclusive authority or discretionary authority in specific areas.

3. In relation to specific areas of jurisdiction and authority not claimed by a Province Government, Union laws of general application will apply to internal constituent provinces and citizens.

4. Where a constituent province does not negotiate any authority in specific areas and in relation to that area there exists a commission, council, board, committee, or other representative body by any denomination, the constituent provinces have the right to be equally represented.

5. Pursuant to Article 15(1), when a constituent province exercises its' discretionary authority to make laws in the following areas enumerated at Article 14

   (1)(b) Traffic and transportation
   (1)(d) Public Order, Peace and Safety;
   (1)(f) Emergency situations;

   federal or union state laws prevail to the extent of any inconsistency or conflict.

6. Pursuant to Article 15(1), when a constituent province exercises its' discretionary authority to make laws in respect of the remaining areas enumerated at Article 14:

   (1)(a) Education
   (1)(c) Law enforcement
   (1)(e) Provision of health and social services; or
   (1)(g) Agriculture and natural resources

(1)(i) Administration of justice and law enforcement, including but not limited to police, prisons and correctional facilities;

as well as laws concerning:

a. The administration and management of province government;
b. The good government of the province and its' citizens;
c. General welfare and development of the province, including economic measures;
d. Internal constituent civic status and criteria
e. Culture and language
f. Indigenous property within the Indigenous province territory
g. The use, regulation and administration of Indigenous lands, including internal local taxation (within the framework of Federal tax laws)
h. The development, structure, organisation or administration of health, welfare and cultural programs;
i. Child and family services including the adoption of children
j. The devolution of cultural property of Indigenous citizens who die intestate
k. The punishment of Indigenous citizens in accordance with laws and procedures enacted by the Indigenous Province Government or Indigenous customary law

province laws prevail to the extent of any inconsistency or conflict.

7. This Draft Constitution will not affect the ability of the province governments or citizens to partiCAPate in and benefit from Commonwealth and Union programs in accordance with general criteria established for these programs from time to time.

8. The constituent provinces will have primary criminal jurisdiction over their citizens and offences against union laws, unless such jurisdiction is expressly reserved for the Supreme Court of South Australia by union legislation.

9. In the event that a constituent province decides to establish internal policing, it must make laws to establish a Police Service and a Police Board, containing provisions which conform to or are compatible with Union and Commonwealth laws. The police of a constituent province will be stationed and will operate exclusively within that constituent province, without prejudice to the right of pursuit. The Police Service will be responsible for the protection and enforcement of law and order and public safety within that constituent province, including offences against union and province laws, without prejudice to the functions of the Union or Federal police. A Constitutional Law shall regulate the strength and equipment of constituent province police and a Cooperation Agreement between the Union government and the constituent provinces will provide for and define the extent of cooperation on police matters.

Article 15 Cooperation and coordination

1. Where expressly provided for in this Constitution, legislative matters may be regulated in a manner binding upon the Union government and the constituent provinces, through Constitutional Laws. Such laws shall be approved by the Union Parliament and both constituent province legislatures in accordance with procedures set down in a Constitutional Law and will have precedence over any other Union or constituent province laws.

2. The constituent provinces may conclude agreements with each other or with the Union Government. Such agreements may create common organisations and institutions on matters within the competence of the parties. Such agreements will have the same legal standing as Constitutional Laws, provided they have been approved by the Union Parliament and both constituent province legislatures.

3. To the extent the constituent provinces have reserved competence to legislate in specific areas and their exists a general interest in promoting unity and standardisation, the constituent provinces will strive to coordinate or harmonise their policy and legislation where applicable, including through agreements, common standards and consultations wherever appropriate, in particular on the following matters:

    a. Tourism;
    b. Protection of the environment and use and conservation of energy;
    c. Fisheries and agriculture;
    d. Industry and commerce, including insurance, consumer protection, professions and professional associations;
    e. Zoning and planning, including for overland transport;
    f. Sports and education;
    g. Health, including regulation of tobacco, alcohol and drugs, and veterinary matters;
    h. Social security and labour;
    i. Family and company law; and
    j. Acceptance of validity of documents.

4. Either constituent province or any branch of the Union Government may initiate the coordination or harmonisation process.

5. Agreements on such coordination or harmonisation must be approved by the competent branch of the constituent province governments and, if Union participation is required, by the competent branch of the Union government.

6. The Union government shall support, both financially and logistically, cooperative endeavours between the constituent provinces or between municipalities and communities located in different constituent provinces.

7. The Union government and the constituent provinces will mutually recognize and accept valid documents issued by government authorities and educational, medical and other public service institutions of constituent provinces.

Article 16 Devolution of Programs and Services

Constituent provinces will be able to negotiate the transfer of programs and services existing prior to the conclusion of this Agreement, dealing with the following matters:

a. authority (the power to decide and act) for the design, delivery and management of native languages and cultural education;
b. authority for design, delivery and administration of tribal justice; and
c. authority for the design, delivery and administration of programs relating to education, health and social services, justice, and employment opportunities.

Article 17 Constituent Provinces, Funding and Financial Transfer Agreements

1. Every five years, or at such other periods agreed to, the Union and Province governments will negotiate a fiscal financing agreement which will set out the financial contributions from the Union Government to the constituent province for a 5year period and which will go towards the funding of the latter's institutions and enable the provision of agreed-upon public services, at levels reasonably comparable to those generally prevailing in other Australian states.

2. The financial transfer arrangements will:
    a. set out a method to determine the levels of money that Union Government will provide to a constituent province;
    b. set out the obligations of all parties including basic program delivery standards for the programs and services of a constituent province; and
    c. set standards of accountability and reporting in respect of funds transferred.

3. Province citizens will be eligible to receive public services and to participate in programs established by both the Union and Federal government, in accordance with conditions in effect from time to time, to the extent that a province government has not assumed responsibility for such public services or programs under a fiscal financing agreement.

4. The parties will negotiate and attempt to reach agreements in relation to grants, between them, in lieu of property taxes.

5. The funding for province governments will be a shared responsibility and it is the shared objective of both Union and Province governments that, where feasible, province government reliance on transfers will be reduced over time.

Article 18 South Australia as a member of the Commonwealth

1. United South Australia will remain a member of the Commonwealth of Australia.

2. The governments of the constituent provinces shall participate in the formulation of policy concerning United South Australia in the Commonwealth and abroad.

3. United South Australia will be represented in the Commonwealth by the Union government in its areas of competence or where a matter predominantly concerns an area of its competence. Where a matter falls predominantly or exclusively into an area of competence of the constituent provinces, United South Australia may be represented either by a Union government or a constituent province representative, provided the latter is able to commit United South Australia.

4. Obligations of United South Australia arising out of Commonwealth membership or obligations will be implemented by the Union or constituent province authority which enjoys legislative competence for the subject matter to which an obligation pertains. Where the Commonwealth prescribes the creation of coordination or cooperation bodies, Cooperation Agreements shall establish such bodies. The establishment of other administrative structures necessary for the implementation of Commonwealth obligations will be decided on the basis of efficiency requirements.

5. Paragraphs 2-5 of this Article shall be the subject of a Cooperation Agreement between the Union government and the constituent provinces.

6. No provision of this Constitution shall invalidate laws, acts or measures by the Union government or the constituent provinces required by the obligations of Commonwealth membership, or prevent laws, acts or measures by the Commonwealth, or institutions thereof, from having the force of law throughout Australia.

Part V: UNION INSTITUTIONS

Article 19 Eligibility and incompatibility and discharge of duties

1. Unless otherwise provided by this Constitution or law, a person shall be qualified to be elected or appointed to serve in Union institutions if he or she is an Australian citizen and has reached the age of 18.

2. Unless otherwise provided by this Constitution or law, no person may be a member of more than one branch of the Union government or of the Union government and a constituent province government.

Article 20 Union government immunities and exemptions

1. Members of Parliament, the United Executive Council, the Supreme Court, as well as the Independent Officers, shall enjoy immunity from arrest or judicial prosecution unless Union law provides otherwise.

2. No members of Parliament shall be entitled to set up or claim any of the privileges, immunities, or powers to which the member may be entitled by virtue of Art.19(1), as against any summons, subpoena, writ, order, process, or proceeding whatsoever issued by any court of law within the said province or Union.

3. Further to sub-section (2);

   a) no writ of *capias ad satisfaciendum* shall be executed or put into effect against any such member during any session of Parliament, or within ten days prior to the meeting thereof; and

   b) no member shall be liable to any penalty or process for non-attendance as a witness in any court when such non-attendance is occasioned by the member's attendance in the member's place in Parliament.

4. Union property used for official purposes will be exempt from the application of constituent province legislation, including taxation. Such property shall be under the direct and sole authority of the Union government. The constituent provinces will assist the Union police in assuring the safety of Union property located within their territorial boundaries.

SECTION A: THE LEGISLATURE

Article 21 Composition and election of Union Parliament

1. The Union Parliament will be composed of two Chambers: the Legislative Council and the Legislative Assembly.

2. Each Chamber shall have 48 members, elected for five years on the basis of proportional representation. The constituent provinces shall serve as electoral precincts unless special majority law provides otherwise, in which case each precinct may have no less than ten seats.

3. The Legislative Council shall be composed of an equal number of Indigenous and non-Indigenous senators. They shall be elected on a proportional basis by the citizens of South Australia, voting separately as Indigenous and non-Indigenous South Australians, in accordance with the Union law.

4. The Legislative Assembly shall be composed of members from both constituent provinces, with seats attributed on the basis of the number of persons holding civic status of each constituent province; provided that each constituent province shall be attributed a minimum of one quarter of the seats.

5. The Islamic, Buddhist, and Orthodox minorities shall each be represented by at least one member. Individuals of such minorities shall be entitled to vote for the election of such members irrespective of their internal constituent province civic status. Such members shall be counted against the quota of the constituent province where the majority of the individuals of the respective minority reside.

Article 22 Place, time and sessions of Union Parliament

1. The Presidency of the Union Executive Council may fix such places and times for holding an ordinary session of Parliament; alternatively, one quarter of sitting members of either Chamber may convene Parliament for an extraordinary session, provided always that sufficient notice of the time and place fixed is given.

2. There shall be a session of Parliament at least once in every year; so that a period of twelve calendar months shall not intervene between the last sitting of the Parliament in one session and the first sitting of the Parliament in the next session.

Article 23 Organisation of Union Parliament

1. Election of house leaders

a. Each Chamber, at its first meeting and before proceeding to other business, shall elect house leaders, one President and two Vice-Presidents in the Legislative Council, and one Speaker and two Vice-Speakers in the Legislative Assembly. There will be one Vice-President and one Vice-Speaker from each constituent province, for a period of five years.

The President and the Speaker will be from alternate constituent provinces, as will the two consecutive Presidents or Speakers of a Chamber. The Vice President who does not come from the same constituent province as the President of the relevant Chamber shall be the First Vice-President of that Chamber.

b. The relevant house leaders will preside over all meetings of the respective Chamber.

c. The election of the house leaders will be notified to the Union Executive Council.

2. Committees and Commissions

a. Each Chamber shall organise its own committees or commissions in accordance with the law.

b. The seat of a member of Parliament shall not be or become vacant and a member of Parliament shall not be liable to any forfeiture, fine, or other disability by reason only of the fact that—

i. the member accepts or holds office as the chairman or a member of any committee appointed by either House of Parliament or by both Houses of Parliament, or of any royal commission;

ii. as such chairman or member, the member receives or is entitled to receive any salary, fees, allowances or other emoluments.

3. Attendance

The law shall regulate the obligation of members of Parliament to attend meetings and the consequences of failure to do so without authorisation.

Article 24 Powers of Union Parliament

1. Parliament shall legislate and take decisions.

2. Parliament shall elect and oversee the functioning of the Union Executive Council.

3. Parliament may by special majority refer to the Supreme Court allegations of impropriety regarding the members of the Union Executive Council and of organs of the independent institutions, and independent officers, for grave violations of their duties or serious crimes.

Article 25 Quorums and Voting Procedure

1. Unless otherwise specified in this Constitution, decisions of Parliament need the approval of both Chambers.

2. Each Chamber shall require the presence of a majority of sitting members, including at least one respective house leader or one senior and one junior house leader, in order to take decisions.

3. In the Legislative Council, there must also be a minimum of one quarter of the members of *each* constituent province present.

4. Decisions will be taken by the majority of votes of the members present, other than the house leaders.

5. The most senior house leader present will have the casting vote when the vote is equal.

6. A special majority comprising at least two fifths of sitting members from each constituent province of the Legislative Council, in addition to a simple majority of members of the Legislative Assembly present and voting, shall be required for:

    a. Money bills
    b. Ratification of agreements on matters which fall within the legislative competence of the constituent provinces;
    c. Election of the Presidential Council; and
    d. Other matters which specifically require special majority approval pursuant to other provisions of this Constitution.

Article 26 Settlement of deadlocks

The law shall provide for a conciliation mechanism between the Chambers of Union Parliament.

SECTION B: THE UNION EXECUTIVE

Article 27 The Union Executive Council

1. The Office of Head of State is vested in the Union Executive Council, which shall exercise the executive power. The Council shall have six voting members. Parliament may elect additional, non-voting members. Unless it decides otherwise by special majority, it shall elect three non-voting members.

2. All members of the Union Executive Council shall be elected by Parliament for a fixed five-year term on a single list by special majority. The list shall specify the voting members.

3. Members of the Union Executive Council shall not hold any other public office or private position.

4. The members of the Union Executive Council shall continue to exercise their functions after expiry of their term in office until a new Council has been elected.

5. In the event of a vacancy in the Council, a replacement shall be elected by Parliament by special majority for the remainder of the term of office.

6. The composition of the Union Executive Council shall be proportional to the numbers of persons holding the civic status of each constituent province, though at least one third of

voting members and one third of non-voting members must hail from each constituent province.

7. The Union Executive Council shall strive to reach all decisions by consensus. Where it fails to reach consensus, it shall make decisions by simple majority of members present and voting unless otherwise stated in this Constitution. Such majority must in all cases comprise at least one member from each constituent province. In case of absence, a voting member may delegate his/her voting right to a non-voting member.

8. Notwithstanding voting rights, the members of the Union Executive Council shall be equal. Any member of the Council shall be able to place an item on the agenda of the Council.

9. The Union Executive Council may, where appropriate, invite the heads of government of the constituent provinces to participate without a vote in its meetings.

10. The Union Executive Council shall suggest candidates or appoint members for Commonwealth bodies.

Article 28 The President and the Vice-President of the Council

1. The Council shall decide on the rotation of the offices of the President and Vice-President among its members. Unless the voting members of the Council unanimously decide otherwise, the following arrangements shall apply:

    a. Two members of the Council, not hailing from the same constituent province, shall be elected by the Council on a single list; and
    b. They shall rotate in the exercise of the offices of the President and Vice-President of the Council every twenty calendar months. The first President of the Council in each term shall be the member hailing from the more populous constituent state.

2. The Vice-President of the Council shall assume the duties of the President in the absence or temporary incapacity of the President.

3. The President of the Council shall convene and chair the meetings of the Union Executive Council.

4. Neither the President nor the Vice President of the Council shall have a casting vote.

Article 29 The Departments

1. The Union Executive Council shall attribute Union departments among its members. It may decide that some members shall be without portfolio.

2. Where the Council is unable to reach a decision on the attribution of departments, the choice shall be in order of strength of party representation in the Legislative Council.

3. The heads of department shall prepare and execute decisions of the Union Executive Council relating to their departments.

Article 30 Representation of the Union Executive Council

1. The President of the Council shall represent the Union Executive Council as Head of State.

2. In representing the Union Executive Council as Head of State, the President shall attend official functions, sign and receive credentials of diplomatic envoys, and confer the honours of United South Australia.

3. The President of the Council shall represent United South Australia at meetings of heads of government.

4. The President of the Council, when representing United South Australia at meetings of the Commonwealth, shall be accompanied by the Vice-President.

5. The heads of the relevant Departments shall represent United South Australia at meetings of government ministers unless otherwise provided for by law or by agreement between the Union government and the constituent provinces.

6. Where a Commonwealth meeting is likely to address vital interests of a constituent province, and the Council representative to that meeting hails from the other constituent province, the Council shall, upon special request of a majority of Council members from the interested constituent province, appoint a member from that constituent province to accompany the Council representative, provided delegations to such meetings may comprise more than one person.

7. Any representative of United South Australia at Commonwealth meetings shall be bound by decisions of the Union Executive Council. Where the Council has appointed one of its members to accompany its representative in accordance with paragraph 5 of this Article, the representative of United South Australia shall exercise any discretion in concord with such member.

Article 31 Union administration

1. A Public Service Commission composed of men and women hailing in equal numbers from each constituent province shall have authority to appoint and promote Union public servants. It shall take its decisions in accordance with the law.

2. The composition of the public service shall, where not otherwise specified in this Constitution or special majority law, be proportional to the population of the constituent provinces, though at least one-third of the public servants at every level of the administration must hail from each constituent province.

3. A Union public servant may not simultaneously serve as a public servant of a constituent province.

SECTION C: PROVINCE GOVERNMENT

Article 32 Constitutional guarantee of the continuance of province government in the United South Australia

1. There shall continue to be an internal system of province government in this State under which elected local governing bodies are individually constituted with such powers as negotiated with Union Parliament for the better government of the areas within the internal constituent provinces and its people resident within.
2. The manner in which province government bodies are constituted is a matter of individual government, and the nature and extent of their powers, functions, duties and responsibilities shall be determined by negotiations with Union Parliament and set in province Constitutions.
3. No Bill or Act of Union Parliament can overturn the existence of constituent province governments unless such decision has been requested by the absolute majority of the respective province government, and only after public consultation and a referendum within the respective province.

SECTION D: INDEPENDENT OFFICERS AND INSTITUTIONS

Article 33 Other independent officers

1. The Attorney-General, the Deputy Attorney-General, the Auditor-General and the Deputy Auditor-General will be independent officers and not come under any department. They shall be appointed by the Union Executive Council for a non renewable term of office of nine years but no longer than until their 70th birthday.

2. The Attorney-General and the Auditor-General shall not hail from the same constituent state nor shall the Attorney-General and the Deputy Attorney-General or the Auditor-General and the Deputy-Auditor General.

Article 34 The office of the Attorney-General and the Deputy Attorney-General

1. The Attorney-General and the Deputy Attorney-General shall be the Head and Deputy Head, respectively, of the Union Law Office. They shall be appointed and hold office in the same manner and under the same terms and conditions as judges of the Supreme Court of United South Australia and shall not be removed from office except on like grounds and in the same manner as such a judge.

2. The Attorney-General, assisted by the Deputy Attorney-General, shall be the legal adviser of the Union government and shall exercise all such other powers and shall perform all such other functions and duties as are conferred or imposed on him/her by this Constitution or by law.

3. The Attorney-General shall have power, exercisable at his/her discretion in the public interest, to institute, conduct, take over and continue or discontinue any proceedings regarding offences against Union law against any person in United South Australia.

4. The law shall regulate further aspects of the office of the Attorney-General and the Deputy Attorney-General.

Article 35 The office of the Auditor-General and the Deputy Auditor-General

1. The Auditor-General and Deputy Auditor-General shall be the Head and Deputy Head, respectively, of the Union Audit Office. They shall be members of the Union public service and shall not be retired or removed from office except on like grounds and in like manner as judges of the Supreme Court of United South Australia.

2. The Auditor-General, assisted by the Deputy Auditor-General, shall, on behalf of the Union government, control all disbursements and receipts and audit and inspect all accounts of moneys and other assets administered, and of liabilities incurred, by or under the authority of the Union government and for this purpose, shall have the right of access to all books, records and returns relating to such accounts and to places where such assets are kept.

3. The Auditor-General, assisted by the Deputy Auditor-General, shall exercise all such other powers and shall perform all such other functions and duties as are conferred or imposed on him/her by law. The Auditor-General shall submit annually a report on the exercise of his functions and duties under this Constitution to the Union Executive Council who shall cause it to be laid before Parliament.

SECTION E: THE JUDICIARY

Article 36 Supreme Court of United South Australia

1. The Supreme Court of United South Australia as previously established in South Australia shall continue subject to this Constitution and under all laws made under this Constitution pertaining to its jurisdiction and for its future governance shall count an equal number of judges from each constituent province among its members as that may be determined by the Parliament.

2. The Union Executive Council shall appoint the judges and one chief justice, in accordance with criteria and procedures stipulated in a special majority law which shall also fix the number of judges.

3. The Commissions of all Judges of the Supreme Court shall be and remain in full force during their good behaviour until their retirement according to Union law.

4. It shall be lawful for the Union Executive Council to remove any Judge of the Supreme Court upon the address of both Houses of the Parliament.

5. The Supreme Court of South Australia shall sit as a Constitutional Court, an Appellate Court or as a Court of Primary Union Jurisdiction. Judges shall be appointed to serve each Court. The law shall regulate the number of judges serving in each court, the attribution of competence to each court, the division of the three courts into chambers, and any right of appeal within either

court or from the Court of Primary Union Jurisdiction to the Appellate Court or the Constitutional Court.

6. The Supreme Court shall have primary jurisdiction over violations of Union law where expressly provided by Union legislation.

7. The Supreme Court shall have general jurisdiction over matters occurring in the United South Australia, and therefore the constituent provinces, unless expressly excluded by the legislature of a constituent province.

8. In addition to the jurisdiction already granted, or otherwise inherent, to the Supreme Court, it shall have exclusive jurisdiction over disputes between the constituent provinces, between one or both constituent provinces and the Union government and between organs of the Union government.

9. The Supreme Court shall have exclusive jurisdiction to determine the validity of any Union or constituent province law under this Constitution or any question that may arise from the precedence of Constitutional laws. Upon request of constituent province courts or other Union or constituent province authorities it may do so in the form of a non-binding opinion, or as a binding declaration as the case may be.

10. The Supreme Court shall be the appeals court in all other disputes on matters which involve the interpretation or an alleged violation of this Draft Constitution, union laws (including Union administrative decisions), or Constitutional laws.

11. If a deadlock arises in one of the Union institutions preventing the taking of a decision without which the Union government or its institutions could not properly function, or the absence of which would result in a substantial default on the obligations of United South Australia as a member of the Commonwealth, the Supreme Court may, upon application of a member of the Union Executive Council, the respective house leader of either Chamber of Parliament, or the Attorney-General or the Deputy Attorney-General, take an ad interim decision on the matter, to remain in force until such time as a decision on the matter is taken by the institution in question. In so acting, the Supreme Court shall exercise appropriate restraint.

12. The Supreme Court shall strive to reach its decisions by consensus and issue joint judgments of the Court. However, all decisions of the Supreme Court may be taken by simple majority as specified by law.

PART VI: AMENDMENTS OF THIS CONSTITUTION

Article 37 Amendments of this Constitution

1. The Main Articles of this Constitution cannot be amended.

2. Amendments of this Constitution, including any attachments which are an integral part of it, shall be considered and adopted by the Union Parliament after consultation with the constituent province governments and interested sectors of society.

3. After adoption by both Chambers of Union Parliament, proposed amendments shall be submitted to referendum for approval by separate majority of the people in each constituent province.

4. Amendments shall enter into force 90 days after their approval, unless the amendment otherwise provides.

PART VII: TRANSITIONAL PROVISIONS

Article 38 Constituent province institutions

1. The transitional institutions of the constituent provinces, namely the legislature, the executive and the judiciary, or their equivalents, shall be in place upon entry into force of the Foundation Agreement in accordance with the constituent province constitutions and the commitments in the Comprehensive Settlement of the South Australia Problem.

2. On _____ all popularly elected office-holders of the constituent provinces shall be elected simultaneously with the elections for the Union Parliaments.

Article 39 Transitional Union Parliament

1. On the day of entry into force of the Final Constitution, each newly elected constituent province legislature or equivalent body shall designate from among its membership 24 delegates to the Union Parliament. To this effect, each group in a constituent province legislature shall designate as many delegates as corresponds to its proportional strength in the legislature.

2. The transitional Union parliament shall exercise the constitutional functions and prerogatives of the Union Parliament in accordance with the procedural provisions in this Constitution regarding the Legislative Council.

3. On _____, the members of both the Legislative Council and Legislative Assembly shall be elected in accordance with this Constitution. The newly elected Union Parliament shall assume its functions on _____.

Article 40 Transitional Head of State

1. Until such time as the newly elected Union Parliament shall have elected a Union Executive Council, the office of the Head of State shall be vested in the Co-Presidency.

2. The Co-Presidents shall be the persons whose names are communicated to the Commonwealth Governor-General in Council no later than two days after successful referenda or, in the absence of such communication, the head of government of the relevant constituent province.

3. In case of resignation or permanent incapacity of either Co-President, the legislature of the relevant constituent province shall elect a replacement.

4. The Co-Presidents shall alternate every calendar month in representing the Co-Presidency as Head of State, beginning with the Co-President hailing from the more populous constituent province.

Article 41 Transitional Union Government

1. Until such time as the newly elected Union Parliament shall have elected a Union Executive Council, the Council of Ministers shall act as the Government of United South Australia.

2. Upon entry into force of the Final Constitution, the members of the Council of Ministers shall be those persons whose names were communicated to the Governor-General in Council no later than two days after successful referenda.

3. After the elections of_____ the newly elected Parliament shall elect a Union Executive Council in accordance with the provisions of this Constitution.

4. The first elected Union Executive Council shall exercise all functions in accordance with the provisions of this Constitution. However, the office of President and Vice-President shall rotate every ten months between the two elected members.

Article 42 Participation of heads of government of constituent provinces in meetings of Union Executive Council

During the first ten years after entry into force of the Final Constitution, the heads of government of the constituent provinces shall be invited to participate without a vote in meetings of the Council of Ministers and, later, the Union Executive Council.

Article 43 Transitional independent officers

1. The transitional independent officers of United South Australia shall serve until the Union Executive Council shall have appointed the independent officers in accordance with this Constitution but no longer than _____. In case of a failure of the Presidential Council to appoint the independent officers, the Supreme Court shall do so in accordance with Article 36(11).

2. The transitional Attorney-General of United South Australia shall be the Attorney-General of the non-Indigenous Province and the transitional Deputy Attorney-General of United South Australia shall be the Deputy Attorney-General of the Indigenous Province. In the exercise of their functions under this Constitution, they shall act in consensus.

3. The transitional Auditor-General of United South Australia shall be the Auditor-General of the Indigenous Province and the transitional Deputy Auditor-General of United South Australia shall be the Deputy Auditor-General of the non-Indigenous Province. In the exercise of their functions under this Constitution, they shall act in consensus.

Article 44 Judges of the Supreme Court

1. Upon entry into force of the Final Constitution, the judges and registrars of the Supreme Court shall be those Indigenous and non-Indigenous so informed by the Governor-General in Council prior to the entry into force of the Final Constitution of their prospective appointment pursuant to preliminary negotiations.

2. The judges of the Supreme Court, who shall serve as members of the Constitutional Court, shall assume their functions immediately upon entry into force of the Final Constitution and shall remain in office until their 70th birthday or upon their removal by the Union Executive Council for impropriety.

3. The Registrar, who shall be a non-Indigenous, and two Deputy Registrars of the Supreme Court hailing from either constituent province, shall assume their functions immediately upon entry into force of the Final Constitution. They will remain in office for 36 calendar months, when they shall be replaced in accordance with the law.

4. The judges who shall serve on the Court of Primary Union Jurisdiction shall be appointed by the Union Executive Council in the course of the month of _____. Until then, the other judges of the Supreme Court shall exercise the functions attributed to the Court of Primary Union Jurisdiction.

Article 45 Public Service

1. Any person holding any public office whatsoever in any authority in South Australia immediately prior to the coming into being of the new state of affairs is a member of the public service of United South Australia.

2. Any such person whose name is not included in the list of offices and personnel of the Union government dated _____ shall serve in the public service of the relevant constituent province.

3. Any such person whose name is included in the list of offices and personnel of the Union government dated _____ shall serve in the public service of the Union government.

4. The Law shall specify implementation procedures and timeframes, not exceeding three years from the entry into force of the Final Constitution, for the full implementation of the provisions of this Constitution relating to the composition of the Union public service for the different branches of that service.

Article 46 Union Laws attached to the Final Constitution

1. The laws and Cooperation Agreements attached to the Final Constitution shall have the same status as if they had been adopted in accordance with the procedures provided for in this Constitution and subsequent to the entry into force of the Main Articles of this Constitution. They may therefore be amended in accordance with normal procedure and their compatibility

with the Main Articles of the Final Constitution is therefore subject to review by the Supreme Court.

2. The Union Parliament shall, upon request of a majority of members from either Chambers, review any of the laws attached to the Final Constitution with regard to their compatibility with the Main Articles and this Constitution.

Article 47 Union-owned property

1. Public property, other than Union property listed in an attachment to this Constitution or municipal property, is the property of the constituent province in which it is located.

2. The Co-Presidents and the heads of government of the constituent provinces shall agree on the list of union property no later than three months after entry into force of the Final Constitution. Should they fail to agree, the transitional Supreme Court shall decide on this list based on representations by all interested parties. Such properties shall be considered as Union properties from the date of entry into force of the Final Constitution unless otherwise decided.

Article 48 Economic transition and harmonisation

1. In the first years after entry into force of the Final Constitution, Union economic policy shall give special attention to the harmonisation and convergence of the economies of the constituent province within the shortest possible time.

2. Without prejudice to the application of the Commonwealth Constitution, the Final Constitution and the new state of affairs shall not be construed as altering rights enjoyed by business people prior to entry into force of the Final Constitution, and such business will continue unaffected, unless otherwise the object of this Constitution or subsequent negotiations after entry into force of the Final Constitution.

Article 49 Missing persons

The heads of government of the constituent provinces shall without delay take steps to conclusively resolve the issue of missing persons. Both constituent provinces shall cooperate fully with a Committee on Removed Persons in South Australia in accordance with terms of reference that keep in mind the Bringing Them Home Report delivered on 26 May 1997. Each constituent province shall carry out and conclude any and all necessary inquiries.

ATTACHMENT 1: CATALOGUE OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

In accordance with Article 11 of the Constitution

Article 1 Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

    a. in defence of any person from unlawful violence;

    b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

    c. in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 2 Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 3 Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour. For the purpose of this article the term “forced or compulsory labour” shall not include:

    a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 4 of this Catalogue or during conditional release from such detention;

    b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

    c. any service exacted in case of an emergency or calamity threatening the life or well-being of the community; or

    d. any work or service which forms part of normal civic obligations.

Article 4 Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

    a. the lawful detention of a person after conviction by a competent court;
    b. the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
    c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
    d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
    e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; or
    f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 5 Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

    a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
    b. to have adequate time and facilities for the preparation of his defence;
    c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
    d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; and
    e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 6 No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 7 Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 8 Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety,

for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 9 Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 10 Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 11 Right to marry

Men and women of marriageable age have the right to marry and to found a family.

Article 12 Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Catalogue are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 13 Prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Article 14 Protection of property

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 15 Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Article 16 Right to free elections

United South Australia shall hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Article 17 Prohibition of imprisonment for debt

No one shall be deprived of his liberty merely on the ground of inability to fulfill a contractual obligation.

Article 18 Freedom of Movement

1. Without prejudice to the relevant constitutional law, everyone lawfully within the territory of United South Australia shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave United South Australia. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of order public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

3. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Article 19 Prohibition of collective expulsion of aliens

Collective expulsion of aliens is prohibited.

Article 20 Abolition of the death penalty

The death penalty shall remain abolished. No-one shall be condemned to such penalty or executed.

Article 21 Procedural safeguards relating to expulsion of aliens

1. An alien lawfully resident in the territory of United South Australia shall not be expelled there from except in pursuance of a decision reached in accordance with law and shall be allowed:
    a. to submit reasons against his expulsion;
    b. to have his case reviewed; and
    c. to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1.a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security, provided that there is a valid law made pursuant to the Commonwealth Constitution under which the expulsion may be validly undertaken.

Article 22 Right of appeal in criminal matters

1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

Article 23 Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently her/his conviction has been reversed, or s/he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of United South Australia, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to her/him.

Article 24 Right not to be tried or punished twice

1. No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

Article 25 Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent United South Australia from taking such measures as are necessary in the interests of the children.